

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA,)
4)
5 Plaintiff,) 2:06-cr-00319-RB-3
6)
7 vs.) Philadelphia, PA
8) November 10, 2011
9 VINCENT J. FUMO,)
10)
11 Defendant.)

12 TRANSCRIPT OF SENTENCING HEARING
13 BEFORE THE HONORABLE RONALD L. BUCKWALTER
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

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1 THE CLERK: All rise, please. Court is now in
2 session. The Honorable Ronald L. Buckwalter presiding.

3 THE COURT: Please be seated.

4 IN UNISON: Good morning, Your Honor.

5 THE COURT: Please be seated.

6 I ask that counsel make their remarks in one hour,
7 which I think is plenty of time. That is, one hour for Mr.
8 Pease and one hour for the defendants, which, honestly, when
9 you think that the purpose of this is to try to persuade me, I
10 think if you can't persuade me of your position in that amount
11 of time, no extra time's going to do you much help. So -- and
12 I know, bottom line, we're all anxious to get to the
13 sentencing here today. We'd like to accomplish that today.
14 So unless either counsel tells me that that's an unreasonable
15 limitation, an hour is okay?

16 MR. PEASE: Yes, Your Honor.

17 THE COURT: All right. Okay, Mr. Pease, you may
18 begin.

19 MR. GOLDBERGER: Your Honor, before we begin, may I
20 just, for the record and a couple of housekeeping matters?

21 THE COURT: Okay.

22 MR. GOLDBERGER: I want the -- the record should be
23 clear, as was stated in our -- a couple of things that were
24 stated in our papers but which I would like on the transcript
25 of this proceeding: that we have preserved our objections to

1 two of the matters decided under the guidelines by the Third
2 Circuit, of course, binding on you. But in the event it would
3 ever be relevant, we've preserved our objections to the
4 adjustments for abuse of a charitable purpose and for
5 sophisticated means, each of which is a two-level adjustment
6 under the guidelines.

7 THE COURT: All right.

8 MR. GOLDBERGER: And we believe your original rulings
9 on those were correct; the Third Circuit was not correct in
10 overturning them. If it should ever become an issue, we
11 continue to adhere to our objections on that.

12 The other is that we adhere to our position on the
13 addition of interest to the restitution. That also, that's
14 one where the Third Circuit agreed with you. We had appealed
15 against that. The Court of Appeals ruled against us. We
16 believe that ruling was incorrect. If it should ever be
17 relevant in the future, we preserve our objection to that.

18 There is one other open matter needing decision by
19 Your Honor on which the parties have different positions, and
20 that is whether additional principal restitution -- regardless
21 of the interest question -- would be added. And Your Honor
22 saw that in the papers. Our position is that was decided in
23 our favor on appeal; government's position is that -- I don't
24 want to speak for them, but that it's an open question before
25 you. In any event, I believe that one calls for a ruling that

1 hasn't been made and is the only matter --

2 THE COURT: I've already done -- I've done a
3 significant amount of research on that issue already, and
4 actually, I think -- at first I thought you were right, but I
5 think the government's position is clearly correct on this
6 one. So -- and that will be noted in what I hand down here
7 later on, so you'll have an appeal from that, as well.

8 MR. GOLDBERGER: Thank you, Your Honor.

9 THE COURT: Okay, Mr. Pease, you may begin.

10 MR. PEASE: With respect to the loss numbers, Your
11 Honor, I just want to put on the record the government's
12 position and its calculation of the loss for guidelines
13 purposes --

14 THE COURT: Um-hum.

15 MR. PEASE: -- since there's a small disagreement, as
16 I understand it between the parties' submissions. The
17 government's position is that the, for guidelines purposes,
18 the loss to the Senate is \$2,440,282.49. The loss to
19 Citizens' Alliance is \$1,620,472.35. And the loss to the
20 Seaport Museum is \$127,906.88. There's --

21 THE COURT: I think, we have -- they're the same as
22 you said -- add in your memory. Yeah.

23 MR. PEASE: Okay, there was a 50,000-dollar
24 difference in our position and the defenses; they're mistaken.
25 They omitted 50,000 dollars with respect to the Gazela

1 painting. The Third Circuit affirmed the credit this Court
2 gave, which was only 100,000 dollars. So that accounts for
3 the 50,000-dollar difference.

4 THE COURT: Okay, I'll --

5 MR. PEASE: And that's page 2, footnote 1 and 9.

6 THE COURT: -- look into that before I impose the
7 final sentence.

8 MR. PEASE: Okay.

9 THE COURT: On the restitution, a really quick aside,
10 half of this, I think, is -- I'm going to award half to make
11 him pay and half, make Ms. Arnao pay. Now, in terms of
12 sentencing, I think that's appropriate, isn't it?

13 MR. PEASE: Well, no, I think, Your Honor --

14 THE COURT: Or do you have to award all and then --

15 MR. PEASE: Jointly and severally.

16 THE COURT: Are we still with the joint and severally
17 business?

18 MR. PEASE: I think with -- well, it depends on which
19 we're talking about. Ms. Arnao was never convicted of any
20 counts related to the Senate loss, so the loss related to
21 Citizens' is --

22 THE COURT: No, oh, no, I'm not talking -- oh, no,
23 no. I wasn't talking about that at all.

24 MR. PEASE: Okay. So with --

25 THE COURT: Absolutely not. No, just to Citizens'

1 Alliance.

2 MR. PEASE: Right. With respect to Citiz --

3 THE COURT: There, I thought that -- my thinking is
4 that should be split.

5 MR. PEASE: Well, I think, Your Honor, we would
6 suggest that it be joint --

7 THE COURT: Whether it's a jointly and severally
8 thing, I'm not sure. That law sort of changed, too, hasn't
9 it?

10 MR. PEASE: Well, I think --

11 THE COURT: But let's not get hung up on this.

12 MR. PEASE: Okay.

13 THE COURT: This is a relatively small --

14 MR. GOLDBERGER: Just on the statutory question, the
15 statute clearly gives you discretion to make restitution where
16 two people may be liable for the same restitution --

17 THE COURT: Well --

18 MR. GOLDBERGER: -- either joint and several --

19 THE COURT: -- that's what --

20 MR. GOLDBERGER: -- or apportioned is what the
21 statute says.

22 THE COURT: That's what I thought. And I was going
23 to --

24 MR. PEASE: Here, Your Honor --

25 THE COURT: You'll see it in my final order, but I

1 was thinking fifty-fifty apportion was appropriate.

2 MR. PEASE: Okay, when I talk about restitution,
3 I'll --

4 THE COURT: Look, that's a relatively small matter in
5 the whole scheme of this thing. I mean, I'm going to award
6 full restitution to Citizens' Alliance.

7 MR. PEASE: Okay.

8 THE COURT: But how that -- I only raised that now to
9 see if we could have any agreement on that, but since we
10 can't, I'll just do what I think's --

11 MR. PEASE: Okay, well, if I can have a chance to
12 address that when I talk about restitution --

13 THE COURT: Yeah, okay.

14 MR. PEASE: -- I'll see if I can persuade you.

15 Your Honor, I'd like to start by talking about age
16 and health; it's an issue that's become the subject of a
17 variance --

18 THE COURT: Um-hum.

19 MR. PEASE: -- request by the defense. And I want to
20 first point out, you heard testimony yesterday from Dr.
21 Manenti, he walked you through all of the medical records and
22 demonstrated, I think very clearly, that this is an issue that
23 doesn't belong in consideration of variance. Mr. Fumo's
24 health has done nothing but improve since he's been
25 incarcerated by the objective measures and the criteria that

1 Dr. Manenti walked us through. The e-mails we submitted to
2 the Court also corroborate that with respect to someone of his
3 age and condition, he's doing fine and in fact better than
4 when he first reported to prison.

5 The thing also, Your Honor, that is really important
6 to consider is that Mr. Fumo had the very same conditions, the
7 very ones that you asked Vicki Humphreys about yesterday when
8 she -- at the end of her remarks. He had all those conditions
9 when he entered into this crime spree. And so --

10 THE COURT: Oh, yeah, I know. I told -- even though
11 I told Dr. Manenti, I'm impressed with what they've done
12 there, it's still a fact that he has all these conditions.
13 That's -- I'm just trying to determine -- it's unusual to have
14 that many --

15 MR. PEASE: Well, I think --

16 THE COURT: I don't have a doctor to tell me anyway,
17 and of course, it was a tough question to ask Agent Humphreys;
18 I didn't -- what she thought -- just sort of wanted her
19 opinion. But that's a lot of illness. That's a lot of
20 physical disability --

21 MR. PEASE: But I --

22 THE COURT: -- at least as I view it.

23 MR. PEASE: They're the same --

24 THE COURT: Whether there's enough for a variance,
25 that's a question.

1 MR. PEASE: They're the same maladies he suffered
2 from when he engaged in the scheme. And now he wants the same
3 illnesses that he now suffers from --

4 THE COURT: Yeah.

5 MR. PEASE: -- and did during the scheme to now cause
6 him a benefit. In other words, the sicker you are, the poorer
7 health you're in, then you can go and commit crimes and get a
8 break, get a huge sentencing break because you're in poor
9 health, according to him. It simply isn't a principle that is
10 worthy of any kind of credibility. The fact is that he's
11 healthy for his age. And as to the issue of unusual, which
12 came up, you heard Dr. Manenti testify yesterday, with respect
13 to someone in his age group, there are thousands of inmates in
14 Care Level 2 or in Care Level 3 and Care Level 4. In other
15 words, there are many inmates who are incarcerated today in
16 the Bureau of Prisons who are not in the general population,
17 are not as health as he is; they're not walking and exercising
18 up to a mile a day. They don't have stable conditions like he
19 does. In fact, what's unusual is that he is in Care Level 2.
20 Someone with his conditions, you might argue would be in Care
21 Level 3 or 4. So for someone of his age group, there are many
22 thousands of prisoners in far worse shape than he is who might
23 be able to claim their conditions are unusual. It simply
24 isn't a factor here. It shouldn't be a factor in this Court's
25 condition of what an appropriate sentence is.

1 The predictions of Dr. DePace and Dr. McCormick that
2 you heard two years ago about the dire consequences he would
3 face if he were to be incarcerated have proven to be entirely
4 wrong. There was no basis for those predictions, and as
5 you've seen, over two years after the fact, he's in healthy
6 condition; he's gotten the care and treatment that he would,
7 in fact, in some respects better, probably, than he'd have
8 gotten outside of the confines of the Bureau of Prisons. And
9 so with respect to his age and his health, there's nothing
10 unusual about it and that should justify giving him a
11 variance, giving him a break with respect to those conditions.

12 I want to talk a little bit about the issue of
13 substance abuse. This --

14 THE COURT: About what?

15 MR. PEASE: Substance abuse.

16 THE COURT: Okay.

17 MR. PEASE: Okay? This is a subject that, as Mr.
18 Zauzmer said yesterday, we hadn't really focused on. We
19 weren't aware of this RDAP program and his efforts to get into
20 it, and it came up in the October 18th sentencing memo that
21 was submitted to the Court. And in that sentencing memo, the
22 defense argued that the failure of the Bureau of Prisons to
23 admit him into this program is a reason for leniency. It's a
24 justification for a variance because it demonstrates the
25 inadequacies of the Bureau of Prisons' medical systems.

1 So quite naturally, we wanted to find out whether
2 it's true, what's this all about. And when we got the file
3 from the Bureau of Prisons, it contained letters we hadn't
4 seen before, letters this Court hadn't seen before. Things
5 that probably Mr. Fumo didn't expect would be cross-examined
6 and examined the way they were. And when we looked into this
7 issue, we began to shake our heads because we hadn't heard of
8 drug abuse problems from Mr. Fumo; we hadn't heard of alcohol
9 abuse problems by him at any time.

10 This Court, as you know, in the pre-sentencing
11 process had a pre-sentence report prepared, and Mr. Hassinger
12 quite diligently surveyed all of his physicians and gathered
13 lots of medical records, and we had a lot of testimony and
14 issues about all the conditions we talked about yesterday, but
15 this wasn't one of them. And when he was interviewed, Mr.
16 Fumo denied any history of substance abuse. He wasn't denying
17 taking illicit substances. He said he has no history of drug
18 or alcohol abuse and denies ever being treated for such a
19 condition. Not a single physician who wrote letters to Your
20 Honor mentioned anything about this. It wasn't until August
21 17th, two weeks before Mr. Fumo was going to report to prison,
22 he wanted to get a sixty-day deferral of his report date, and
23 the justification was he was so heavily addicted, so into
24 abusive substances, that it would essentially be unhealthy,
25 dangerous to his health if he had to report when the Court

1 ordered him to report. And so on the sole basis of this
2 affidavit by some drug counselor named Marsha Klein whose only
3 job it was -- whose professional research into Mr. Fumo was
4 simply to talk to him and listen to his self-serving and false
5 accounts of his drug abuse history, she wrote an affidavit
6 which was appended to a letter that was submitted to this
7 Court suggesting that he was heavily addicted and needed time
8 to report to prison. And this Court denied that request; he
9 reported on August 31st. But during the two-week period,
10 August 23rd, we know from the notes we saw yesterday, that Ms.
11 Klein met with Mr. Fumo. On August 23rd of '09, eight days
12 before he reported to jail, he now told her that he's not able
13 to get off the drugs, that he's heavily using Xanax, Darvocet,
14 Ambien to deal with his substance abuse problem which he's had
15 so long. Interestingly, Your Honor, in the October 18th
16 filing that the defense submitted to you, the explanation was
17 that Mr. Fumo had kept this hidden for all these years. In
18 other words, the reason why it's not in those letters that you
19 received in July of 2009, the reason why it's not in any
20 medical records, the reason why it wasn't told to the
21 probation officer is because it was kept hidden. So that's
22 the opening defense position in this sentencing proceeding,
23 and that's the explanation that Your Honor is being given for
24 the fact that this is all coming up so lately.

25 But what's the truth? Well, let's look at what the

1 Bureau of Prisons was told. When we look at that, the file
2 that was in Kentucky that Mr. Zauzmer and I hadn't seen until
3 the last couple of weeks tells an entirely different story,
4 doesn't it? Because when you look at the affidavit of Dr.
5 Fisher that we had introduced here yesterday in the court,
6 what does Dr. Fisher say? He says that he's been treating and
7 diagnosed Mr. Fumo with alcohol abuse and substance abuse
8 problems since 2003. He says that the conditions which he
9 diagnosed him with include alcohol dependence and two other
10 psychiatric conditions that don't appear anywhere in what the
11 response was to the probation officer in this case. How could
12 that be, Your Honor? Which is it? Is this --

13 And you also saw a letter yesterday, a 2001 letter
14 from Dr. DePace which the defense claims shows this condition
15 had been identified and diagnosed as far back as 2001. And
16 that was Exhibit 4A; it was the attachment to Exhibit 4A.
17 Well, what Mr. Fumo wasn't counting on was when he got to
18 prison on August 31st of 2009, when he was questioned by the
19 psychologist at the jail and asked about all of his
20 conditions, he readily told this person, I'm a substance
21 abuser, I use tranquilizers, I need help. I need substance
22 abuse treatment. And what Mr. Fumo wasn't counting on was
23 that he would be given a toxicology test, that he would have
24 to give a urinalysis that would prove or deny these claims.
25 He was ready for everything else: he knew what to tell his

1 drug counselor; he knew what stories to make up; he knew what
2 to tell the Bureau of Prisons officials. He knew what to say
3 in his applications to the officials of the Bureau of Prisons
4 because he had retained a consultant, a very experienced
5 person, Mr. Sickler, who could guide him through this process
6 and get him ready for prison and what to expect and how to
7 deal with inmates and staff, and also make him aware of this.
8 So being the opportunist that he is, he saw an opportunity to
9 get a year off of his sentence, and he took full advantage of
10 it, not probably expecting that he would be tested for these
11 drugs, and they would then become a spotlight of yesterday's
12 hearing. And so what he did was he lied and claimed an
13 addiction that doesn't exist. He solicited these doctors to
14 write these retrospective letters, claiming to have diagnosed
15 and treated him for things that they had never treated him
16 before, for which there isn't a shred of evidence that it had
17 ever existed. Sure, there's a list of prescriptions, and he
18 had been taking a whole host of different drugs to treat his
19 medical problems; there isn't any debate about that. And what
20 the doctors said to Your Honor in letters submitted to this
21 Court was that he needs -- prior to the first sentencing, he
22 needs all those drugs; there are three conditions from which
23 he's suffering and a whole variety of maladies. And so the
24 position before the first sentencing was BOP can't take care
25 of this guy; his health is too severe, his condition's too

1 complex, and the drugs that he needs to sustain him are simply
2 ones that, in some cases, aren't available or which won't
3 properly be managed by the Bureau of Prisons. So that was the
4 position first.

5 After he gets sentenced and when he's on his way to
6 jail, and he's in jail, the position changes. Now, all of a
7 sudden, all those drugs that the doctors claim he needs and
8 that his treating physicians said couldn't be handled properly
9 by the Bureau of Prisons, now, all of a sudden, they show a
10 terrible addiction, a substance abuse problem that according
11 to these self-serving after-the-fact affidavits were supported
12 as far back as 2003. And so why this is important, why did we
13 spend any time on this yesterday? The reason is because it
14 tells you everything you need to know about this person: he's
15 dishonest in every respect. He tried to pull a fast one.
16 First, he tried to pull it on the Bureau of Prisons. The
17 Bureau of Prisons, without intervention from these two
18 prosecutors in this room, weren't gullible enough to go for
19 this because they see this kind of thing all the time.
20 Inmates know, when they get to jail, that there's this benefit
21 available to them, and they try to allocate resources to
22 people who need it the most. And so when he couldn't defraud
23 the Bureau of Prisons, he comes back into this court. And on
24 October 18th, he wants you to remedy this terrible injustice
25 that's been put upon him. He hasn't been able to get into the

1 RDAP program, and that shows that BOP, the Bureau of Prisons,
2 can't provide adequate medical care. How dare he? How dare
3 this man come into this court and try to deceive you about
4 this problem that never existed, asking you to cut him a
5 break. He wants you to cut him the break that the Bureau of
6 Prisons didn't have.

7 And how did he get there? Did Marsha Klein give him
8 a toxicology exam? Did Dr. DePace do it? Did these
9 physicians ever diagnose this problem? No. This is a lie and
10 it's a fraud. And it's emblematic of every aspect of the way
11 he operated his life, and it's perjury that he committed in
12 this court. And this Court shouldn't stand for it for one
13 second. These doctors relied simply on him. They believed
14 what he told them and they wanted to help him, the same way
15 all the enablers in this case who you heard from during his
16 trial did the same thing to help him commit this fraud. He's
17 still a manipulator; he has no credibility. He comes into
18 this court, before this sentencing, he bragged in his e-mails
19 he would dress like the Unabomber and come into court and look
20 terrible so he could get sympathy, and the truth is, he's in
21 better shape -- he's got 5,000 dollar suits sitting back in
22 his closet at Green Street, and he wants to come into this
23 court looking disheveled like the Unabomber so that he can get
24 sympathy. He's in terrible health, going to die the minute he
25 goes back to jail, a terrible substance abuser, he's been

1 cheated by the Bureau of Prisons out of the chance to get
2 treatment? That's a fraud and that's a lie. And I submit to
3 Your Honor, you shouldn't go for that at all.

4 I want to talk about the severity of the crimes.
5 Your Honor --

6 MR. GOLDBERGER: Judge, I just want to -- can I
7 intercede for one second? We brought clothes; the marshal
8 said it's a sentencing.

9 THE COURT: Look, I don't care a damn bit about
10 the -- I'm sorry, a darn bit about the clothes.

11 MR. GOLDBERGER: I mean, he goes on and on about it
12 again. The marshal wouldn't let him put it on.

13 THE COURT: That's a matter of personal preference.
14 I don't care what clothes the guy wears. Frankly, I'd rather
15 be dressed in something less formal than a suit myself. But
16 that has nothing to do with his sentencing.

17 MR. PEASE: I want to talk about --

18 THE COURT: I mean, let's get to some substantive
19 stuff, please. And now you're going to. You're going to talk
20 about -- what was the point you were going to make?

21 MR. PEASE: I was going to talk about the severity of
22 the crimes.

23 THE COURT: That's a substantive issue here for me to
24 get right.

25 MR. PEASE: Yesterday, when Mr. Contino was on the

1 stand, you asked him some questions about the number of
2 counts. And you wanted to know, Your Honor, from Mr. Contino,
3 were people who reacted to the original sentence reacting to
4 the fact there were seen to be so many counts of conviction,
5 yet in proportion, the sentence seemed low. And you commented
6 that the number of counts might overstate or suggest that the
7 crimes in their severity are more severe than they really are.
8 And I want to talk --

9 THE COURT: Kind of got that from your letters you
10 sent me, Mr. Pease. There were so many of them.

11 MR. PEASE: Well --

12 THE COURT: All they said was 137 counts. That
13 doesn't reflect much of a study of what's going on, does it?

14 MR. PEASE: Well, actually --

15 THE COURT: You know, when people see 137 counts --

16 MR. PEASE: Right.

17 THE COURT: -- that's what it reflects.

18 MR. PEASE: Well, actually, Your Honor, I --

19 THE COURT: So okay, go ahead with your argument.
20 Tell me about the severity of this, though. That's what
21 you're talking about.

22 MR. PEASE: I want to talk about the number of
23 counts. I asked Mr. Higgins to give you --

24 THE COURT: Yeah, I want to talk about that, too.

25 MR. PEASE: I asked Mr. Higgins to give you Exhibit

1 1635; it should be in front of you. And this was a trial
2 exhibit that was given to the jury. And it's a summary of all
3 the counts in the indictment, count by count.

4 THE COURT: Yeah.

5 MR. PEASE: It identifies the different aspects of
6 the crimes to which each count related. And the point I want
7 to -- there are two points I want to make with respect to the
8 number of counts in this case, the first of which is, if you
9 look through this indictment and each of the counts, you'll
10 see that there are only one or two counts pertaining to every
11 aspect of the fraud. In other words, there aren't a hundred
12 mail fraud counts that relate to the polling, for example.
13 There aren't -- we didn't overcharge the case to try to drive
14 up the number of counts so that it would look worse than it
15 is. If you go through this and analyze it, you'll see --

16 THE COURT: I think you did, but I don't think it
17 matters. I mean, I don't think it matters in determining my
18 sentence the fact you did that. I think you violated your own
19 manual for sentencing, but that doesn't affect the guidelines
20 at all; that doesn't affect the sentence. The question is
21 what are the substantive crimes that were committed here, not
22 the number of counts. What did he do? And that's the thing
23 I'm really zeroing in on. And of course he did -- with regard
24 to, for example, the way he executed this fraud, checks had to
25 be sent in the ordinary course of business, which they were

1 from the Senate to pay the employees. But I mean, that -- and
2 you make that a separate count. I mean, I don't think that's
3 fair. But that's a matter which reasonable prosecutors --

4 MR. PEASE: Well, let me -- if I can respond to that.

5 THE COURT: -- and I'm an ex-prosecutor -- excuse me,
6 just, reasonable prosecutors can disagree on that. But it
7 doesn't affect the guideline calculation. We've got a
8 guideline calculation here that's real high.

9 MR. PEASE: What we did in this case, with respect --

10 THE COURT: And so I'm just -- I don't -- not that
11 you have to spend any time on it, I thought you were going to
12 talk what are the substance of these crimes; what did he do.
13 And what makes it so bad. That's -- I thought you were going
14 to address the severity of the crimes.

15 MR. PEASE: That's what I'm prepared to address.

16 THE COURT: And there's a lot you can address in that
17 issue.

18 MR. PEASE: With --

19 THE COURT: Not the least of which is the obstruction
20 of justice.

21 MR. PEASE: Let's start with the Senate fraud --

22 THE COURT: Okay.

23 MR. PEASE: -- counts. Okay, and you heard yesterday
24 from Mr. Contino, although the charge in this case was
25 conspiracy and fraud, and there was a loss amount of a little

1 over -- about two and a half million dollars of money that was
2 taken from the taxpayers --

3 THE COURT: Right.

4 MR. PEASE: -- what he did was it robbed taxpayers of
5 fair elections. That's what' happened here. He used Senate
6 employees and Senate contractors and paid them --

7 THE COURT: Right.

8 MR. PEASE: -- to do campaign work on state time and
9 state facilities, giving him --

10 THE COURT: And they corrupted -- he corrupted
11 democracy. I agree with Mr. Contino on that; no question
12 about it.

13 MR. PEASE: Hundreds of thousands of dollars for
14 Howard Cain, for example, 80,000 dollars a year, Your Honor,
15 he was paid to run campaigns for over five years; 40,000
16 dollars a year to Phil Press; 30,000 dollars a year each to
17 Spagna and Novelli. Frank Wallace got over 175,000 dollars.
18 A quarter million dollars in political polls; 20,000 dollars
19 to take Senator Jubelirer out of office; 70,000 dollars to
20 defeat a referendum at the New Jersey shore relating to the
21 height of dunes to protect his property value. Senate
22 computers handed out like business cards to friends, family,
23 and including the Casey campaign and other campaigns he tried
24 to help. This gave his machine an advantage that wasn't
25 merited. It helped him keep his power and his office, all of

1 it was clearly criminal.

2 And yet most importantly, these are crimes he refuses
3 to acknowledge are crimes. If you remember, when I asked him
4 about this during the trial, what did he say about it? He
5 said that's akin to spitting on the sidewalk. That's the way
6 this man views his responsibilities as an elected official and
7 his power and authority to use state tax dollars. He had the
8 discretion to spend this money, to allocate it, to use it for
9 the good of taxpayers. And what did he do? With respect to
10 millions of dollars, he stole it and took it for himself.

11 The other thing he talks about, Mr. Fumo does, is
12 that -- in his e-mails and other places -- that a dime never
13 went into his pocket, that he got no benefit from it, that
14 there weren't any victims. He took the money --

15 THE COURT: Well -- there's a difference between a
16 dime never went into his pocket and that he got no benefits
17 from it.

18 MR. PEASE: Well, he says both.

19 THE COURT: He got benefits from it; there's no
20 question about that.

21 MR. PEASE: Well, Your Honor, there's no difference
22 here --

23 THE COURT: No question about it. Well, maybe -- but
24 I mean --

25 MR. PEASE: Well, let me ask you this.

1 THE COURT: Distinction without difference, perhaps.

2 MR. PEASE: Sure it is because he had the authority,
3 himself, to allocate how fund were spent --

4 THE COURT: Um-hum.

5 MR. PEASE: -- to direct the payment of bills. He
6 didn't need to put the money in his pocket. There's no
7 difference between what he did here and a bank executive who
8 takes the money, writes a cashier's check to spend two and a
9 half million dollars on himself. Does he have to put the
10 money into his account first? He didn't need to. Only Mr.
11 Fumo had the authority to do that. There's no difference; the
12 money went into his pocket and through his pockets to help
13 benefit himself.

14 THE COURT: That's a good point.

15 MR. PEASE: And that's really what we're talking
16 about here. He denigrates the seriousness of these offenses
17 by suggesting that there are no victims. Okay, the taxpayers
18 of Pennsylvania are victims. People care about this crime.
19 People are offended by it because he was someone who had the
20 unique authority and position to exercise this ability to
21 allocate funds. There weren't many powerful officials in
22 Pennsylvania who could do what he did, and he chose to steal
23 and benefit himself. And that's what this Senate fraud was
24 about.

25 And the reason why there were so many counts is

1 because we wanted a jury to look at each one of these
2 individuals individually and decide by -- is there proof
3 beyond a reasonable doubt that all these people that the
4 government says were misused with taxpayer money to go and
5 spend on these campaigns, is it really true? We wanted a
6 verdict. So that's why there's a count for each of these
7 people. That's why there's one for Cain and one for Palermo
8 and there's one for Rubin, and all these other people, because
9 he used so many people. We didn't want just one or two
10 counts, leaving it vague as to what this man did. You know by
11 the jury's verdict, when you look through the indictment and
12 analyze the counts that we had different counts for different
13 people. We wanted to cover all the ways he stole from the
14 Senate. We wanted there to be at least a count or two, so
15 that when this trial ended, the jury would have rendered a
16 verdict with every issue that the government claimed was
17 fraudulent. And the jury returned a verdict on 137 counts.
18 If we were interested in violating some manual or driving up
19 the number of counts, we could have had 10,000 counts in this
20 case. There's no limit. In our view of this case, and I
21 think what the indictment tells you and what the jury verdict
22 shows, is that with respect to every aspect of the crime, he's
23 guilty.

24 THE COURT: There is a limit. There is an obligation
25 set forth in your own manual to be careful about overcharging.

1 But that's not an argument that matters here --

2 MR. PEASE: Let's --

3 THE COURT: -- because the guidelines don't take that
4 into account.

5 MR. PEASE: Let's talk about -- I talked about the
6 Senate for a few minutes. Let's talk about Citizens'
7 Alliance.

8 Citizens' Alliance is a charitable organization
9 created by Fumo and his staff in 1991 to serve the citizens of
10 Philadelphia, provide services that weren't being supplied by
11 the city of Philadelphia. A valid, important purpose;
12 providing needed services to the citizens of this city. And
13 through his --

14 THE COURT: Which I think you agreed on. And your
15 opening statement, at some time, agreed that Citizens'
16 Alliance performed a lot of --

17 MR. PEASE: They did.

18 THE COURT: -- good services for the community.

19 MR. PEASE: Oh, I absolutely agree.

20 THE COURT: Yes.

21 MR. PEASE: Citizens' Alliance was an important
22 organization serving the taxpayers of Philadelphia --

23 THE COURT: Yes.

24 MR. PEASE: -- and South Philadelphia. And so it had
25 a noble purpose and a function --

1 THE COURT: And a function, yes.

2 MR. PEASE: -- for a number of years. And --

3 THE COURT: It's carried out -- I mean it hired a lot
4 of -- as I recall, I was impressed by the fact that it hired
5 these people who would have trouble getting jobs elsewhere, at
6 least in --

7 MR. PEASE: That's true.

8 THE COURT: -- some instances. And that's a --

9 MR. PEASE: You're right, Your Honor. This --

10 THE COURT: -- that's an admirable --

11 MR. PEASE: -- you're right and you heard from many
12 of them during the trial. And --

13 THE COURT: Yes.

14 MR. PEASE: -- these are some folks who had substance
15 abuse problems or had run-ins with the law --

16 THE COURT: Yes.

17 MR. PEASE: -- who probably couldn't get hired, and
18 found a place in this organization --

19 THE COURT: Right.

20 MR. PEASE: -- and felt good about themselves because
21 of the work that they did for the community. It was
22 appreciated and it was valued. And you know where those
23 people are today? They're unemployed. They all lost their
24 jobs because the organization is now a -- it was in shambles
25 and is attempting to try to recover, which will take years to

1 try to get back to where it was.

2 And that's because this man looted the organization.
3 See, he used his power as a politician to allocate funds from
4 the State Treasury to support this organization, year after
5 year, to help it build and expand and buy equipment and hire
6 more of these people, who you heard from during the trial.

7 Yet the problem was he decided that being a public
8 official, being someone who has the ability to do good and
9 make a difference in our society, that's not its own reward.
10 It's not enough to be paid 100,000 dollars a year to be a
11 state legislator; it's not enough to have the ability to have
12 businesses to your legal work to my law firm so it can pay me
13 a million dollars a year; it's not enough inherit a bank from
14 my father and grandfather that pays me a quarter of a million
15 dollars a year; it's not enough to make millions of dollars a
16 year. If I'm Vince Fumo, I have the ability to do good for
17 people and I'm going to do some good.

18 I'm going to do a lot of good, but you know what? I
19 deserve something. I deserve extra. I deserve to have
20 Citizens' Alliance supplement my operations. They should buy
21 me food so I can have these barbecues down on the shore. They
22 should pay for polls for campaigns because hey, why should my
23 campaign account pay for all of this? They should give me a
24 38,000 dollar minivan so I can run around down the shore. Why
25 should I buy a car with my money? Why should I use money that

1 I certainly could afford myself when I can have Citizens'
2 Alliance pay for all these things? Why should I pay for a
3 trip to go to Cuba when I can take my friends and have
4 Citizens' Alliance pay for it? Why should I pay for
5 bubbles -- a device that keeps bubbles flowing at the deck at
6 my shore during the wintertime so that the docks don't freeze
7 when I can have Citizens' Alliance pay for it?

8 THE COURT: I forgot about --

9 MR. PEASE: He stole, in large --

10 THE COURT: -- I forgot about the bubbles. I was
11 thinking of something else.

12 MR. PEASE: Your Honor, he stole in large ways and
13 small --

14 THE COURT: Yes.

15 MR. PEASE: -- and he didn't need to steal; he did it
16 because he could, because he felt entitled.

17 What this case really was about was a public official
18 who did much good, and from doing much good, earned many, many
19 rewards. He earned the adulation of a loyal staff; he was
20 reelected year after year with overwhelming majorities; he's
21 someone who everybody in this courtroom agrees did a lot of
22 good for Philadelphia by his leadership and his ability to
23 deliver on many projects that you're aware of through all the
24 letters you've received.

25 We don't quibble with any of that, Your Honor. The

1 fundamental problem and disagreement we have here is that if
2 we allow public officials to do what he has done -- who
3 consider themselves to be so --

4 THE COURT: They have to be punished. There's no
5 question about it.

6 MR. PEASE: Yes, Your Honor, absolutely.

7 THE COURT: No question about it.

8 MR. PEASE: And so the demise of Citizens' Alliance
9 is a result of Mr. Fumo looting it, misusing it, lying to the
10 IRS.

11 You know, we haven't spoken about that here in much
12 detail before. One of the problems, when you operate a public
13 charity, is you have to report to the IRS on public tax
14 returns. They're the only kind of tax returns that are
15 public; everyone else's are private. And there's a reason for
16 that, because the taxpayers supplement nonprofit
17 organizations. All of us -- all of us in this country who pay
18 taxes give these organizations a break by not requiring them
19 to pay taxes. And the requirement is that you do good for the
20 public. One of the rules is you can't engage yourself in
21 partisan political campaigns. He knew that. The other thing
22 you can't do is personally enrich yourself. You can't use the
23 charity's money to buy yourself things if you control the
24 finances of the charity.

25 He broke both of those laws and lied about it on the

1 returns to the IRS. And so the public didn't have the ability
2 to see and find out how is Citizens' Alliance paying these
3 bills. You know why? Because there was a carefully laid out
4 plan to create these for-profit subsidiaries. So what
5 Citizens' Alliance did was it filed its tax returns every year
6 for the nonprofit, but created a dozen or more for-profit
7 subsidiaries, through which the monies that were allocated to
8 the organization flowed, creating, for example, Eastern
9 Leasing, a dummy corporation used to spend over 300,000
10 dollars for luxury automobiles, used for Mr. Fumo and for
11 his -- him and Ruth Arnao's --

12 THE COURT: Yes, the tax issue always is fraught with
13 so many difficult concerns. I don't think it's much time
14 spending time on -- but a lot of that was at the -- he had tax
15 lawyers and so forth, and setting up --

16 MR. PEASE: Who he lied to.

17 THE COURT: -- setting up -- setting up corporations
18 and things like that, it's beyond me what the business lawyers
19 do. But that's a minor part of this whole thing. The major
20 part is the Senate fraud and the obstruction. Senate fraud,
21 Citizens' Alliance fraud and obstruction; they're the major
22 things.

23 MR. PEASE: Well, let me -- let me, if I can --

24 THE COURT: I don't mean to denigrate the other two,
25 but that -- they're the major, let's face it.

1 MR. PEASE: Just a few words about the Seaport
2 Museum --

3 THE COURT: Yes.

4 MR. PEASE: -- which is also a victim in this case.
5 He used his position as a board member to take for himself
6 25,000 dollar cruises that he knew he wasn't allowed to take.
7 He deprived the museum of its ability to raise revenue for
8 itself by having other -- those charters available for other
9 people to use. It's about 135,000 dollars. Okay, it pales in
10 comparison to the Senate fraud and the Citizens' Alliance
11 fraud, but it's important because it tells you about the
12 history and characteristics and the nature of the offense in
13 this case.

14 This is a guy who stole in any ways he could --

15 THE COURT: He takes advantage of his position,
16 there's no question about it.

17 MR. PEASE: He did. As a board member of the
18 museum --

19 THE COURT: I think so. I mean I -- no question
20 about --

21 MR. PEASE: So I think the Seaport Museum charges
22 help you to understand better what's going on inside this
23 man's head. He thinks because he allocates funds and he's a
24 supporter of the Seaport Museum -- he's a nominal board attend
25 person who rarely ever attended board meetings -- but he knew

1 he could get the museum to splurge for these trips. And when
2 one of these cruisers that the museum had was in Maine being
3 repaired, he had the museum spend over 10,000 dollars so it
4 could charter a luxury yacht so this man could take a
5 vacation.

6 He's a multimillionaire, making millions of dollars a
7 year with millions in the bank; he can pay for his own
8 vacations. But he saw an opportunity and abused his power and
9 abused his position as a board member to make it pay for his
10 vacations. Why should some struggling museum funded with
11 taxpayer money pay for a multimillionaire's vacations? It
12 shouldn't.

13 But he's a thief. That's -- to his core, he's a
14 thief, utterly dishonest and corrupt to his core. And that
15 tells you a lot about the character and history of this person
16 and the nature of the offense.

17 But let me -- since Your Honor asked about it. To
18 me, the obstruction of justice, as I think Your Honor quite
19 correctly noted, really is a very significant case. In this
20 particular matter, as you know, the U.S. Attorney's Office
21 issued a subpoena to Citizens' Alliance in early 2004. The
22 newspapers' coverage about this nonprofit organization and the
23 sourcing of its finances all led Mr. Fumo to have his staff
24 members engage in an enormous obstruction of justice. We
25 know, from evidence that was produced during this trial, that

1 he directed Leonard Luchko to work with all the members of his
2 staff in Harrisburg and Philadelphia -- as well as to go over
3 to the Citizens' Alliance -- and delete any e-mails sent to
4 him or sent by him, and also to wipe the hard drives so there
5 wouldn't be any evidence of any of the crimes that we
6 uncovered. It happened; systematically it went on.

7 But, you know, the amazing thing about it is not just
8 how many people were involved and how many computers were
9 wiped and how much evidence was destroyed. It's so brazen
10 because in 2005, as Vicki Humphreys testified, the government
11 began asking questions of lawyers for Citizens' Alliance,
12 wondering why is it we have no e-mail; where's the e-mail,
13 what happened to it.

14 We were able to persuade Citizens' Alliance to let an
15 FBI examiner go and take a look at the hard drive of the
16 Citizens' Alliance computer. And the FBI agents were able to
17 recover e-mail from that, which hadn't been wiped
18 successfully, which made it clear that there was this campaign
19 to destroy evidence. And so all the while, even a year after
20 a full-blown criminal grand jury investigation is going
21 forward, witnesses are testifying in the grand jury, this man
22 is still telling his staff to destroy evidence so that the
23 prosecutors can't get it.

24 And then we get to trial, right? And we -- and he
25 gets on the stand and testifies for six days. And what does

1 he have to say for himself? He comes up with these wild
2 stories about his lawyers telling him that it was okay to
3 destroy evidence as long as the subpoena wasn't put in your
4 hands. But he's got no explanation -- no explanation for
5 Citizens' Alliance because he knew about the subpoena;
6 testimony in this trial proved he was aware of it.

7 And so what does he have to say about the
8 obstruction? Well, Leonard Luchko, he did this on his own.
9 He went out on his own over to Citizens' Alliance, showed up
10 at the office at night and, without my knowing it, destroyed
11 all the evidence of my crimes. And so we're supposed to
12 believe that. That's one of the twenty-seven examples of
13 perjury in this case that Mr. Zauzmer talked about yesterday.
14 But here's a guy who thinks he's above the law; he doesn't
15 have to comply with subpoenas. The answer is, I'm going to
16 destroy all the evidence, I'm going to get everybody to lie.

17 What's remarkable about this case is how many people
18 were involved in the effort to obstruct justice. These people
19 knew -- they were instructed and some of them balked at it.
20 You know that -- from the testimony -- that some people were
21 really concerned about it, and yet they went along because
22 he's so powerful. Nobody ever would dare cross Vincent Fumo.
23 Nobody would and they didn't.

24 And so what I've seen -- and what I know from Mr.
25 Zauzmer and my colleagues -- if there is a more egregious case

1 of obstruction of justice that was ever prosecuted in this
2 district, we're not aware of it. The magnitude of it, the
3 audacity of it, the length of time it took. Even after, Your
4 Honor -- even after the search warrants are executed at his
5 district office, we still have Leonard Luchko hiding, in his
6 home, PC cards containing evidence that were the subject of
7 subpoenas. And so the FBI goes out and does another search
8 warrant and we find more evidence. Subpoenas don't matter to
9 him, search warrants don't matter to him. And it's only
10 through a remarkable effort of forensic examiners of the FBI
11 that we were able to pull together -- and by issuing subpoenas
12 to third parties who held e-mail that had been destroyed by
13 this man -- that we were able to pull enough -- pull together
14 enough evidence of the crimes to convict him.

15 And what's remarkable is just the willingness to
16 blame Leonard Luchko, who had no benefit from any of this.
17 He's the one -- one of the few employees that worked for him
18 who actually worked more than a full-time job. The guy was
19 loyal to him to a fault. And yet, when it's convenient, Mr.
20 Fumo blames him.

21 There has never been a bigger obstruction of justice
22 case in this district, Your Honor. And for that reason alone,
23 it deserves serious punishment. Because he didn't just
24 obstruct justice, he came into this courtroom, I cross-
25 examined him for four days and he lied, repeatedly.

1 Throughout every aspect of his examination, he lied. He has
2 no respect for this Court, he has no respect for the law. And
3 that's what we proved and it's clear.

4 I want to talk about the guidelines, if I can, Your
5 Honor. In this case, as Your Honor has already made clear,
6 we're started at a guideline range of 210 to 262 months. We
7 are, at the last proceeding, at 121 to 151. And so that
8 itself is a significant difference. Essentially, we're
9 starting at a place which is nearly double the starting point
10 we were at before. And yet, through the defense submissions,
11 Mr. Fumo's lawyers are going to argue to you why the sentence
12 should still, nonetheless, be fifty-five months.

13 And there is a lot of criticism leveled at the
14 guidelines that you've read about in their submissions. I'd
15 like to respond to some of the points the defense has made
16 about the fraud guidelines especially.

17 First, you were told that there was no empirical
18 analysis performed for the fraud guidelines. Well, we know
19 that simply isn't the case. Beginning when the guidelines
20 started in 1987, and through several amendments over the
21 years, the Sentencing Commission made clear they are the
22 result of empirical analysis. We know, by studying Sentencing
23 Commission data since the Booker case was decided, that there
24 were over 51,000 cases in the United States sentence, in which
25 Section 2B1.1 was the principal guideline. In just twelve

1 percent of those cases were defendants given a variance or a
2 departure; just 6,605 times. The median decrease from the
3 fraud guidelines is in months -- is only about ten months. So
4 12.74 percent of the time, there's a variance and it's only
5 ten months, not fifteen years, which is what the defense is
6 asking you to give.

7 In addition, you saw a sentencing analysis performed
8 by a consultant, which was attached to the defense
9 submission -- I believe it was October 28th -- where these
10 analysts looked through all the Sentencing Commission
11 sentences and data and tried to analyze and isolate a pool of
12 about 10,261 cases where the guidelines were at least 210
13 months. And you heard that there were twelve occasions --
14 just twelve times out over 10,000 sentences -- where a
15 defendant faced the same range as this defendant, where the
16 court imposed a sentence less than sixty months. That's one-
17 tenth of one percent.

18 So he is arguing to you that he is in the one-tenth
19 of one percent of those cases. What's surprising is that
20 there aren't more occasions where that happened; there's
21 always going to be aberrations where the guidelines, for one
22 reason or another, overstate the seriousness of the crime.
23 For example, somebody who joins a conspiracy late; some of
24 these securities cases where the losses are in the billions,
25 which go beyond the top of the guidelines table. Of course

1 there are going to be aberrations. It isn't surprising that
2 there are some times when that happens, but that tells you
3 that federal judges around the country, in imposing sentence
4 in fraud cases, are essentially, for the most part -- except
5 about twelve or thirteen percent of the time -- faithful to
6 the guidelines.

7 In fraud cases nationally -- for example, last year,
8 the median decrease in months from the guideline range upon a
9 departure was just nine months. For a downward departure
10 combined with a variance, the median decrease in months from
11 the guideline range was only twelve. For a variance alone, it
12 was ten months.

13 In 2010, the Sentencing Commission surveyed federal
14 judges throughout the United States, inquiring about their
15 views about the fraud guidelines. And judges responded about
16 their views regarding whether the fraud table was appropriate
17 or not. Sixty-five percent of federal judges last year
18 expressed the opinion that the fraud guidelines were generally
19 appropriate; twenty-four percent, they thought that they were
20 too low. So that's eighty-nine percent of federal judges in
21 the country believe they're either adequate or proper, or else
22 too low. Only ten percent of the federal judges in this
23 country thought the fraud guidelines were over -- were too
24 high or too severe.

25 Contrast that with what we've seen in the area of

1 crack sentencing guidelines and child pornography, where
2 federal judges have roundly criticized the guidelines and
3 found that they overstate the severity of the harm and impose
4 too severe a punishment. With respect to the fraud
5 guidelines, the complete opposite is true. And so the
6 criticisms the defense levels at the fraud guidelines are
7 simply factually wrong. There's no basis for them and federal
8 judges around the country are applying the guidelines, they're
9 faithful to the guidelines, and the exceptions, where there
10 are variances and departures, are few and far between and
11 moderate in scope. Nothing of the sort that's being advocated
12 here by the defense.

13 And so, essentially, what the defense position
14 amounts to is they're asking the judge to impose a sentence
15 that's just twenty-six percent of the bottom end of the
16 guideline range. And there's no conceivable reason that we
17 can think of why he should get a seventy-four percent discount
18 from the bottom end of the guideline, Your Honor. That's
19 essentially what the defense is asking the Court to do.

20 THE COURT: Has that always been -- always been the
21 government's position here? I mean there -- I bring that up
22 because the Internet has become such a part of our lives these
23 days and I found this article -- and this could all be
24 wrong. It was in the Bar -- American Bar Association Journal
25 that Fumo, reportedly, could have taken a plea and gotten a

1 five-year term. Is that the position the government took at
2 one time?

3 MR. PEASE: I'm aware of that position from his --

4 THE COURT: You're aware of that position?

5 MR. PEASE: -- I'm aware of his position. It's
6 referenced in his e-mails and months before the indictment in
7 this case, there were some preliminary discussions about a
8 plea. I don't think that plea discussions are appropriate
9 consideration for the position we're in now --

10 THE COURT: Well, they're appropriate consideration
11 to me, considering --

12 MR. PEASE: -- I will --

13 THE COURT: -- whether or not you're being
14 disingenuous in your argument --

15 MR. PEASE: -- I will answer your --

16 THE COURT: -- I -- no, I simply raise that because I
17 saw that that struck me as something -- I was surprised to see
18 that. And I've raised it because I bet this is just a --
19 Internet's something you can't rely on. But -- and so I
20 raised it.

21 Okay, so pre-indictment stage, there was talk about
22 five years.

23 MR. PEASE: We tried -- we tried to persuade -- and
24 the talks never got off the ground.

25 THE COURT: Yes.

1 MR. PEASE: We never remotely got close to any sort
2 of agreement.

3 THE COURT: Okay.

4 MR. PEASE: We knew this trial would be a long trial,
5 would consume --

6 THE COURT: Yes.

7 MR. PEASE: -- vast court resources, would tie a jury
8 up for -- in this case, it ended up being five months. And so
9 in this case especially, and understanding that Mr. Zauzmer
10 and I, we essentially stopped working on every other case we
11 had for a period of eighteen months. Before the trial started
12 and --

13 THE COURT: I believe that. Are you working any
14 other cases now?

15 MR. PEASE: No -- well now I am, sure.

16 THE COURT: Oh. Okay.

17 MR. PEASE: But -- so Your Honor, a case like this --
18 at least in our office's experience in the last thirty years,
19 there hasn't been a case that's consumed the resources that
20 this case had, in terms of two prosecutors, an agent working
21 on this case.

22 And so certainly, before the prosecution initiated in
23 this case, there were attempts, as per -- in virtually every
24 case I work on, we always try to see in a white-collar case,
25 what's the defense position, what's their view about their

1 exposure, are they willing to engage in some discussion. And
2 to induce that sort of discussion, certainly there are
3 alternatives suggested or floated; those never got off the
4 ground. This is somebody who, to this day, thinks he did
5 nothing wrong. He -- to this very day, he thinks he did
6 absolutely nothing wrong; there were no victims, he committed
7 no crime.

8 And here's the thing, Your Honor. If you're
9 persuaded by anything else that I've said to you today or by
10 some of the remarks that he's made, take this into
11 consideration. This is --

12 THE COURT: What?

13 MR. PEASE: Take this into consideration. This is a
14 person who referred to the jury, who sat here for five months
15 and was never late --

16 THE COURT: He referred to them --

17 MR. PEASE: -- corrupt, dumb and prejudiced.

18 THE COURT: -- he referred -- no, he referred to them
19 as dumb --

20 MR. PEASE: Yes.

21 THE COURT: -- partial, and corrupt. Yeah, he did --

22 MR. PEASE: He did.

23 THE COURT: -- I saw that.

24 MR. PEASE: This -- this jury was --

25 THE COURT: Not -- not --

1 MR. PEASE: -- not dumb, it was not corrupt and it
2 wasn't prejudiced. We spent weeks picking that jury. They
3 were --

4 THE COURT: Prejudiced, that was the word, yes.
5 Okay.

6 MR. PEASE: -- yeah, they were here every day. They
7 took six days deliberating on the counts in the indictment.

8 And yet this man, he believes he's a victim of a
9 corrupt -- not just the jury, okay? When he was -- he -- this
10 whole system, from this District Court to the Court of
11 Appeals, is corrupt. Everybody's corrupt. The prosecutors
12 are evil, okay? They are -- and in words I won't use in this
13 courtroom are the way he uses to describe us. And you know, I
14 could care less -- to me. To me, you know what? You know
15 why --

16 THE COURT: I would -- I would think so. I would
17 think so.

18 MR. PEASE: -- you know why? It's a badge of honor.

19 THE COURT: But you know, in our business --

20 MR. PEASE: No, it's --

21 THE COURT: -- you get used to that sort of thing.

22 MR. PEASE: -- with this defendant, it's a badge of
23 honor to be called the names he called me. By someone who is
24 so corrupt and dishonest as this defendant, it's a privilege
25 to be referred to and hated and despised by someone as corrupt

1 as this man.

2 But it's not just me. I could care less. It's what
3 he says about this institution. He got the benefit of
4 exercising his constitutional rights in a case that was hotly
5 contested by outstanding lawyers who fought every conceivable
6 defense they could bring to this case, and represented him as
7 well as any lawyers could represent anyone.

8 THE COURT: And he's -- he's entitled to do -- he's
9 entitled to do that.

10 MR. PEASE: And he -- he absolutely is.

11 THE COURT: And as the courts have said, the mere
12 fact that he's exercised that right shouldn't be held against
13 him in sentencing.

14 MR. PEASE: Absolutely not.

15 THE COURT: I mean it's --

16 MR. PEASE: Absolutely not, except what would happen,
17 Your Honor, you don't have the right -- the Supreme Court said
18 in Dunnigan -- you don't have the right to commit perjury; you
19 don't have a right to abuse the process. You have a right to
20 a fair trial and it shouldn't be held against you. And I
21 agree with all of that. But you don't have the right to come
22 into this courtroom and lie. You don't have a right to go and
23 call the jury corrupt, dumb and prejudiced.

24 And that's -- but those words tell you everything
25 that you need to know about this guy. Because he hasn't

1 learned anything from -- his lesson. And why is that
2 important?

3 THE COURT: Well, you have --

4 MR. PEASE: Why are we talking about this?

5 THE COURT: -- you have the right to call anybody
6 anything you want to. I don't want to pick hairs with you.

7 MR. PEASE: Well --

8 THE COURT: But it, certainly, doesn't speak well for
9 someone's judgment when they do that.

10 MR. PEASE: It -- well --

11 THE COURT: Yes.

12 MR. PEASE: -- judgment, Your Honor -- but it's who
13 he is. It's an honestly held belief.

14 THE COURT: Or their character.

15 MR. PEASE: Or his character.

16 THE COURT: Yes.

17 MR. PEASE: And so one of the issues is recidivism;
18 is, is this a person, somebody who's learned his lesson, who's
19 somebody who, when he gets out of prison, isn't going to
20 engage in the same kind of conduct he has -- he's been engaged
21 in. And do we see that here?

22 Well, interestingly, you heard Mr. Fumo on the stand
23 testifying during this trial. And you heard him talk about
24 how he was entitled to the Citizens' Alliance things that he
25 got, that there were perks and benefits and there's nothing

1 wrong with it.

2 Well, now what does he have to say about Ruth Arnao,
3 his co-defendant? What does he say about her? He says, "I
4 can't believe I had a life surrounded by such scum." Right?
5 "That's a huge disappointment. I guess I was too trusting and
6 too busy getting shit done to suspect that others were such
7 lowlife at heart." He's talking about Ruth Arnao. Okay? He
8 says, "I didn't find out about that until after the
9 indictment. These are expenses relating to the docks."
10 That's why I mentioned the docks, Your Honor. "If I had
11 better control of my finances, I most probably wouldn't be in
12 here. She, and others on my staff, ran all my money."

13 Here's the best one. July 25th, 2011. "Believe me,
14 if a crime was committed, it was Ruth who committed it." Who
15 got the benefit of all this? Was it Ruth Arnao? Sure, she
16 got benefit. She got a nice salary from Citizens', she got to
17 live the high life with him, but the vast majority of the
18 benefits went to him, not Ruth Arnao, yet now it's all her
19 fault. It's all her fault. And he and Mitchell -- or she and
20 Mitchell -- forget that most this "shit" was his and Ruth's
21 fault. That's what he's got to say about that.

22 But he wants to settle scores, too. We know from
23 reading these e-mails, he's planning to go on the attack after
24 Mitchell and Carmen -- that's an April 16th, 2011 e-mail -- he
25 wants to get Jim Schwartzman removed from the board of

1 directors of SEPTA. Why? Because he "stabbed me in the back
2 during my trial stuff". He was the attorney who represented
3 Luchko, who made Mr. Zauzmer aware of the fact that Luchko had
4 been corresponding with Mr. Fumo. And so we ended up not
5 putting him on the stand. And because he -- that's a stab in
6 the back because he didn't help him escape a conviction. If
7 you're not willing to help this man escape a conviction, then
8 he's -- you stabbed him in the back. He's coming after you.

9 How about the "Et tu, Brute" list? People like
10 Sprague, Geoff Johnson, Bob Scandone, Jim Kenney, just to name
11 a few. And so he wants to come out of jail after exacting his
12 revenge on people to the extent he can still do it. And he
13 wants to lobby. He wants to go to Harrisburg and train a
14 whole new -- whole new group of legislators on what it takes
15 to get things done in Harrisburg. This man -- that's what he
16 wants to do.

17 And in recent defense submissions, they denigrate
18 that. They say well, he's not really serious, that's not
19 really -- he realizes he can't do it. Well, that's
20 interesting because they cited a May 23rd e-mail where he
21 expresses doubts about this because that's the day the Court
22 of Appeals argument occurred and he was a little down that
23 day. Seven other times afterwards, he expresses to five
24 different people that he's planning to go out and be a
25 lobbyist. He's going to set up his office. He wanted his

1 daughter to go talk to the CEO of a public accounting firm to
2 let him know that he's going to be setting up a lobbying firm.
3 He's converting the master bedroom in his house in Harrisburg
4 to -- so that it can hold a consulting and lobbying business.
5 This is the last person we want to let loose on Harrisburg, to
6 let them be trained in the ways of getting things done. And
7 yet, that's exactly what he wants to do after he gets his
8 revenge on everybody who he thinks wronged him.

9 So we get beyond specific deterrents and talking
10 about general deterrents. And I just want to talk -- a couple
11 of courts have talked about this issue in public corruption.
12 A district court in Illinois said unlike some criminal justice
13 issues, the crime of public corruption can be deterred by
14 significant penalties that hold all offenders properly
15 accountable. In -- the Eleventh Circuit, in Martin, said
16 defendants in white collar crimes often calculate the
17 financial gain and risk of loss in white collar crimes. And,
18 therefore, can be effected and reduced with serious
19 punishment.

20 What I say is a public is a public trust. And the
21 trust that was emplaced in this man was violated. It was
22 violated not just by one mistake, not just by a momentary
23 indiscretion. It was violated on a daily basis for years by
24 invoking the assistance of dozens of people in many respects,
25 two charities, the Senate of Pennsylvania, and then, when he

1 got caught -- when he was worried about being caught -- a
2 massive obstruction of justice. And to this day, he is still
3 trying to deceive this Court by making false statements about
4 his drug addiction so that he can get a bigger break. That's
5 what is going on here, that's what this case is about.

6 And we're to send a message to people who would
7 engage in these kinds of crimes. The sentence has to match,
8 okay? It has to come close, if not be a guideline sentence.
9 The only way to ensure uniformity across the country in
10 imposing sentences upon similar offenders is to first look to
11 the guidelines and give them serious consideration. And
12 that's what we're asking this Court to do. In this case, the
13 guidelines are seventeen to twenty-one years, approximately.

14 We're looking at -- and especially, in looking at
15 other cases, one of the issues the Court has to address is
16 whether the sentence in this case will result in a disparity
17 with other cases. And we noted -- and one of the reasons I
18 quoted some of those national statistics is because we pointed
19 out some of the examples in this Court in recent years of
20 different sentences arguing that the sentence originally
21 imposed results in a disparity.

22 And the response was an attack on the fraud
23 guidelines. And so I've tried to address -- and we did in our
24 most recent submission -- that really, the fraud guidelines do
25 get significant deference by judges around the country. And

1 so the kind of variance and departure -- well, departure is
2 off the table. The kind of variance that's being advocated
3 here is completely inconsistent with the mainstream of what
4 judges do on a national basis. But you have to look no
5 further than cases involving -- recent cases like John Carter,
6 Corey Kemp, Rick Mariano and the others that we cited in our
7 memo -- to look at those and see and realize that the sentence
8 imposed in this case needs to be a significant sentence.
9 We're advocating a sentence, Your Honor, of fifteen years.

10 But in looking at that, I just want to -- quickly,
11 I've got -- I see I've got a few minutes before my hour's up.

12 THE COURT: Yes.

13 MR. PEASE: If I can, I want to talk about some of
14 the other aggravating factors that exist in this case.

15 First, in the original sentencing proceeding, we
16 asked for a variance upward, based on the loss of public
17 confidence in the integrity of the electoral system. And
18 we -- I asked Mr. Contino to come and testify this time to try
19 to put more details into our thinking, into our rationale and
20 for why we believe that that's an appropriate case.

21 And in this case, he testified that the public gets
22 demoralized when they see that their public officials take
23 advantage of the opportunities given to them. People feel
24 powerless to affect the daily functioning of government. They
25 feel they don't have a say in the electoral process when

1 public officials abuse the trust of the taxpayers. And that's
2 exactly what happened here.

3 And it isn't just my position. Courts around the
4 country have agreed with it. In the Spano case, the court
5 said public corruption --

6 THE COURT: I don't agree with -- I don't disagree
7 with your fundamental proposition there on that.

8 MR. PEASE: Okay. Well, my only position is --

9 THE COURT: I really don't disagree with that at all.

10 MR. PEASE: Okay. The other thing, Your Honor, I
11 just wanted to quickly mention, with --

12 THE COURT: Trying to point out to you throughout
13 this, I think what he's done is -- I agree with Mr. Contino,
14 what he said. It corrupts the whole democratic procedure and
15 people do feel helpless. They can't do anything. As a
16 practical matter, they have one vote. They can't do anything.
17 So I agree with that.

18 MR. PEASE: The guidelines in this case don't also
19 take into account losses to Citizens' Alliance.

20 For example, Citizens' Alliance spent over 2.1
21 million dollars on legal fees to the defense in this case.
22 This bizarre, ironic fate here, the organization that was
23 defrauded and from which over a million-and-a-half dollars was
24 stolen is now advancing fees to the person -- to represent
25 him -- who stole the money. Well, it can't recover this

1 money. I talked to the State Attorney General's Office the
2 other day and I asked them are you able to pursue recovery of
3 the 2.1 million dollars that was advanced for the defense in
4 this case? And the Attorney General's Office told me that
5 they -- they're not planning to do it; the assets aren't there
6 from Ruth Arnao, and so they've given up. So that was -- that
7 money will never be recovered. That 2.1 million dollars is
8 not part of the loss number in this case.

9 The other thing I learned from talking to the
10 Attorney General's Office was that Citizens' Alliance had to
11 repay 387,500 dollars to the Penn's Landing Joint Operating
12 Committee for a grant that had been given to the organization
13 years ago because of the way the funds were misused by Fumo
14 and Arnao. So this struggling organization that's on the
15 verge of collapse, that's trying to survive and provide these
16 services, not only did it lose 2.1 million dollars in legal
17 fees, it just paid 387,000 dollars back, money it didn't have.
18 We've already talked about the fifteen people who lost their
19 jobs.

20 And on the Seaport Museum side of things, they've
21 struggled with the bad publicity. The organization has
22 struggled to attract donors and restore its reputation as a
23 result of these crimes.

24 Your Honor, the last thing I want to address in my
25 remarks is, I want to just talk about restitution. And this

1 is a particularly galling issue, as far as I'm concerned. And
2 the reason I say it's galling is because Mr. Fumo wants to try
3 to escape responsibility for paying restitution in this case.

4 Now, I understand Your Honor has already decided that
5 you agree with the government's position, but it says an awful
6 lot about the character --

7 THE COURT: I don't know what more I can do in the
8 area of restitution.

9 MR. PEASE: Right. I mean it's mandatory, the
10 mandatory victim restitution that requires the order of
11 restitution to victims. The mandate was a general -- the
12 vacation of the original sentencing order was a general
13 mandate. And so this Court has to reconsider the issue from
14 scratch. And in that case, we've made it very clear that in
15 this case, the loss, including prejudgment interest, to all
16 the victims, in total, is \$4,218,813.45, and we've included
17 those numbers in our submission to the Court. So I'd urge you
18 to impose restitution in this case, including prejudgment
19 interest, which the Court of Appeals has affirmed was properly
20 awarded by the Court at the original sentencing hearing.

21 I just want to close on these notes, Your Honor. In
22 decided what a fair and just sentence is, obviously, one of
23 the most important things you look to is the severity of the
24 crimes. And here, they were egregious, severe, curried over
25 many years with multiple victims, and an amazing obstruction

1 of justice. So there's no question about that.

2 Then we look to the heart and nature of the crimes.
3 There -- in this case, he was convicted of fraud. And it's
4 interesting because his lawyers, in their defense submission,
5 they talk about -- that this basically was a case in which the
6 charge was fraud. But what I suggest to Your Honor is that
7 it's much more than fraud. It's also a fraud -- it's an
8 attack on democracy, is what Mr. Contino said. So this is no
9 ordinary fraud case. While the convictions were essentially
10 of a nature involving fraud, the crime itself was an attack on
11 our fundamental institutions and on our democracy. And there
12 is no way to account for that in the sentencing guidelines;
13 there's no two-level enhancement for attacking democracy when
14 you engage in a fraud scheme, but it's something that needs to
15 be considered in deciding what the sentence is.

16 You also should consider the fact of whether or not
17 this is a person who is remorseful and who recognizes that
18 he's engaged in wrongdoing. In other words, has he learned
19 his lesson? Has he learned anything from the experience of
20 having sat in this courtroom for five months, listening to
21 over a hundred witnesses testify, listening to -- or learning
22 about the Court of Appeals' decision? Has he learned anything
23 at all in this case? And no, he's still somebody who thinks
24 he's above the law, who's looking for any way to escape
25 justice, who will say anything it takes to get a break, and

1 whose credibility is not worthy of anything. That's who this
2 person is in front of you. And when he gets out of jail
3 someday, is he going to go back and engage in the same types
4 of offense conduct which we've seen him engage in?

5 And the answer is he will. He's somebody who says "I
6 got convicted of technical bullshit." That's how he talks
7 about the crime, in his words. He says he's Christ-like. He
8 compares himself to Julius Caesar. And he -- and the most
9 galling is that he says his plate's comparable to the millions
10 of Jews who were killed during the Holocaust. This is no
11 martyr. This man is no victim. Nothing could be further from
12 the truth. He is a criminal who engaged in a systematic
13 effort to defraud the Senate and its two nonprofit
14 organizations, lied about it repeatedly during his trial, is
15 continuing to engage in fraudulent conduct, planning revenge
16 on those who he thinks -- who did him wrong.

17 And it's interesting. I went back to look at what he
18 said to Your Honor at the first sentencing hearing. It's
19 really telling. July 14th, 2009. Here's what he said to Your
20 Honor. "All I can say, Your Honor, is that I've done my best,
21 given of myself. The things I did wrong, I never, at the
22 time, thought they were, except for that stuff at Citizens'.
23 And I apologize for that lapse in judgment. In retrospect,
24 would I have done it different? Maybe. Could I have done it
25 different? Probably not. I couldn't have gotten the results

1 I got by being a bureaucrat. I couldn't have gotten the
2 results I got sitting there meekly."

3 So he -- this all fits into this victim mentality,
4 that because I'm so powerful, because I've done so much for
5 Pennsylvania, because I've been successful in many of my
6 interests, including banking and lawyering and being a pilot
7 and being a successful legislator, I don't have time for this
8 crap. These rules, they don't apply to me. It's "technical
9 bullshit". I can steal four million dollars.

10 And that's really what this boils down to. This is a
11 man who stole four million dollars, who comes into this
12 courtroom, asks for a seventy-five percent discount off the
13 sentence. And the basis, essentially, for that discount is
14 because I'm such a great legislator, because I do such good.

15 Yet the crimes he committed, he ignores and he
16 essentially ridicules them and said well, you know, it's
17 fraud, it's "technical bullshit". You know, I could have done
18 it differently, but you know what, I couldn't have been as
19 great.

20 THE COURT: You're getting slightly repetitive now,
21 Mr. Pease. So --

22 MR. PEASE: Your Honor, the sentence in this case
23 should be a guideline sentence for all the reasons I've said.
24 I urge you to impose that sentence on this defendant.

25 THE COURT: Thank you for your very professional

1 comments here, Mr. Pease.

2 MR. PEASE: Thank you.

3 THE COURT: Does the defense wish to close now?

4 MR. COGAN: Mr. Buffone is going to do the first part
5 on the health issues.

6 THE COURT: Okay.

7 MR. BUFFONE: With the Court's permission, Your
8 Honor, I'll take about ten to fifteen minutes and turn it over
9 to --

10 THE COURT: Okay.

11 MR. BUFFONE: -- Mr. Cogan.

12 I'd like to address the --

13 THE COURT: That would be plenty of time on this
14 issue, yes.

15 MR. BUFFONE: I'd like to address the request for a
16 medical variance, based on age and ill health. Your Honor, we
17 just heard a lengthy presentation that I think asked Your
18 Honor to essentially disregard the teachings of the Supreme
19 Court and the mandates of the statute 3553(a), which governs
20 the third step Gunter process that we're engaged in, is quite
21 clear. "The court shall impose a sentence sufficient, but not
22 greater than necessary, to comply with" the terms of 3553(a).

23 Not once in 170 pages of briefing or in an hour of
24 presentation to Your Honor this morning does the government
25 recognize the parsimony principle that must guide Your Honor:

1 "sufficient, but not greater than necessary". And what we
2 just heard this morning runs contrary to the Supreme Court's
3 teaching in Gall: that you can't presume that the advisory
4 guidelines are reasonable nor require extraordinary
5 circumstances for non-guideline sentences.

6 THE COURT: I think in fairness to the government,
7 they're only suggesting that the definition of what's
8 sufficient is something they think is higher than what you do.
9 And certainly, when you have broad terms like that, they are
10 subject to different interpretation. But what we, meaning the
11 Court, hope is that people will look at it as a reasonable
12 person and realize that reasonable people can disagree. So
13 with that little blurb, continue with your --

14 MR. BUFFONE: Okay, Your Honor.

15 THE COURT: Okay.

16 MR. BUFFONE: I think that's -- I don't disagree with
17 Your Honor, but I think the important thing is that 3553(a)(1)
18 requires that this Court look at --

19 THE COURT: Oh, I know. I'm -- I think it's the best
20 guideline this Court has.

21 MR. BUFFONE: Yeah, and --

22 THE COURT: And it's a great tool in forming our
23 sentence, in consideration of those items. That's just a --

24 MR. BUFFONE: And Your Honor --

25 THE COURT: -- that's the tool we have to do a very

1 difficult job, is to go down those items and consider them.

2 MR. BUFFONE: And Your Honor, the very first one:
3 "the nature and circumstances of the offense". Per Your
4 Honor's position, that's correct. "[A]nd the history
5 and characteristics of the defendant".

6 THE COURT: Right.

7 MR. BUFFONE: Let's talk about "the history and
8 characteristics of the defendant". What the government tells
9 you is this is quite simple; he's dishonest in every respect,
10 utterly dishonest to the core. When it comes to things like
11 his documented health problems, the Court's asked to
12 essentially disregard them; they're preexisting conditions.
13 That word "history of the" offender somehow disappears from
14 the statute.

15 Your Honor, this isn't a preexisting condition that,
16 like a healthcare company, Your Honor can disregard. His age
17 and health are serious sentencing factors that the statute
18 requires we consider. The Sentencing Commission recently
19 amended the age and health guidelines relating to departures.
20 Not a request for a departure, Your Honor, but it's --

21 THE COURT: Yeah, I understand.

22 MR. BUFFONE: -- interesting what they did. The
23 Sentencing Commission said that age and health may warrant a
24 sentence outside of the applicable guideline range if the
25 characteristic, individually or in combination -- that's age

1 or health -- with other such circumstances is present to an
2 unusual degree and distinguishes the case from the typical
3 case covered by the guidelines.

4 THE COURT: Of course, as you probably know, I read
5 that before coming in here. And that was why the question of
6 is this an unusual degree, and I don't know.

7 MR. BUFFONE: Well, let me address that, Your Honor.

8 THE COURT: I was trying to -- as you might -- as for
9 my questioning, I was trying to determine that from what I had
10 before me. So go ahead.

11 MR. BUFFONE: Let me address that, Your Honor. I'm
12 just going to run through what Mr. Fumo has been diagnosed for
13 and treated for; what there's a record before Your Honor to
14 sustain. Coronary heart disease, he's had a heart attack,
15 he's a stint in one of his arteries, he's had a mitral valve
16 operation, he has high cholesterol, he's been diagnosed with
17 hardening of the arteries -- plaque in his arteries -- that
18 needs to be treated, and chronic arrhythmia. That's a serious
19 heart attack that some of the leading cardiologists in this
20 city have identified as a serious matter. The Bureau of
21 Prisons doctor, who testified, I think, very straightforwardly
22 to Your Honor recognized that this is a serious problem.

23 And it's even more serious when taken in combination
24 with the other things that Mr. Fumo suffers from.

25 Hypertension; diabetes; chronic kidney disease, stage 3. And

1 you heard the good doctor from the Bureau of Prisons testify
2 that he is very concerned about the comorbidity of the
3 diabetes, the hypertension and the cardiac disease. Severe
4 cervical and lumbar degeneration of his discs that required
5 multiple operations and the placement of titanium rods in his
6 back. Restless leg syndrome. Doesn't sound serious, but you
7 know from Mr. Fumo's e-mails that it is the thing that most
8 bothers him, that deprives him of sleep, makes him pace his
9 cell at night. Gastrointestinal diseases and then psychiatric
10 diseases. And again, no dispute, anxiety disorder,
11 depression, insomnia, obsessive compulsive disorder.

12 Dr. Manenti testified to Your Honor that he's seeing
13 ominous signs with this individual, that he should be treated
14 by a cardiologist. And I was pleased to hear that he's going
15 to make a personal mission to go back and make sure that he
16 is.

17 This is not about the adequacy of the medical
18 treatment that Mr. Fumo received. It is about the existence
19 of these conditions. And no one has challenged their
20 existence. All we hear is the government saying --

21 THE COURT: No, I know. I know that. I had said I
22 don't want to belabor this, but I -- are they present to an
23 unusual degree? And I was -- I don't know if there's any
24 evidence on the record one way or the other on that.

25 MR. BUFFONE: Well, Your Honor, there is.

1 THE COURT: We don't -- do we have -- okay, who --

2 MR. BUFFONE: Dr. Manenti, yesterday, said that if we
3 took the Bureau of Prisons population of approximately 200,000
4 prisoners, that there would be about 8,000 inmates who had one
5 of the conditions that Mr. Fumo has. I --

6 THE COURT: Yes. Then there was less that have all.
7 I know it came around two percent. I was doing some math up
8 here.

9 MR. BUFFONE: Yeah. I think that's about the
10 calculation that we have, Your Honor. So --

11 THE COURT: That is kind of rough, but I did that,
12 yes.

13 MR. BUFFONE: So it is unusual. And I think common
14 sense tells us that anyone with that list of maladies, for a
15 sixty-eight-year-old man, is not the equivalent of the average
16 sixty-eight-year-old man that Your Honor knows. It's not the
17 equivalent of the general population, it's not the equivalent
18 of the prison population.

19 What do we hear from the government about this? The
20 government belittles his health. The government says that
21 this is the result of nothing more than an ordinary man for
22 his age, that Fumo himself doesn't think he's sick, citing e-
23 mails that he sends to his friends and family saying "I'm
24 feeling fine", and reading into that that he must be dealing
25 with these situations and not suffering from these chronic

1 diseases. They blame it on him for not following the advice
2 from the Bureau of Prisons when we heard the doctor in charge
3 of the Bureau of Prisons say that he is a compliant patient.
4 They claim that he doesn't take his heart condition seriously
5 because he doesn't take -- renew his nitroglycerin tablets.
6 Well, you saw that's the one thing that he's able to carry
7 into this courtroom, that there is some confusion about the
8 expiration dates, even to the doctor who examined them. They
9 claim that he's responsible for putting on --

10 THE COURT: Well I think the nitroglycerin pills were
11 on an as-needed basis, I guess. Isn't it?

12 MR. BUFFONE: Yes, Your Honor. You only take it when
13 you --

14 THE COURT: And that's kind of a -- that creates
15 problems with when you get new every refill or something --

16 MR. BUFFONE: If you don't use it, you don't know --

17 THE COURT: Yes.

18 MR. BUFFONE: -- that you have to refill it.

19 THE COURT: Yes, yes.

20 MR. BUFFONE: That he put on weight in prison, when
21 they admit -- again, the doctor testifies, he's doing quite
22 well on his diabetes. The ill health is somehow Mr. Fumo's
23 fault. If that doesn't work, blame it on the doctors.

24 And that takes us to the RDAP matter, Your Honor.
25 The government has hypothecated some broad conspiracy, begun

1 by Mr. Fumo, participated in by all of the professionals --
2 the doctors, the lawyers, the consultants -- to somehow
3 deceive this Court and the Bureau of Prisons about his --

4 THE COURT: Well, let me shortcut you there. I'm not
5 going to make any finding with regard to RDAP. This
6 required -- would require a much longer and detailed hearing
7 for me to determine that he is or is not entitled to RDAP or
8 that he cheated and tried to get all these false reports.

9 I'd have to examine all kinds of people to make a
10 determination there. And, of course, that's not my role. The
11 Bureau of Prisons has made a determination, I believe, that
12 he's not entitled to it, right?

13 MR. BUFFONE: Well, Your Honor, that's correct.
14 Although it's pending appeal and there was a slight mistake
15 with the record here. When the government says that no one
16 ever --

17 THE COURT: Okay. But -- so that's not --

18 MR. BUFFONE: -- no one ever said he was admissible.

19 THE COURT: I'm not going to make a finding on that
20 because I don't think I have the -- I don't have the evidence
21 here to make a specific finding on that and I'm not going to
22 do it.

23 MR. BUFFONE: Well, Your Honor, I'll stay away from
24 it, then.

25 THE COURT: Yes.

1 MR. BUFFONE: And let me just say, in conclusion,
2 again, I appreciate the genius of the statute and Your Honor's
3 very difficult task in weighing the severity of the offense
4 and considering the offender characteristics. And the
5 government gives you a one-sided view of this, again, that his
6 health problem is somehow not relevant because he had it
7 before he committed the crime. And all of the good works that
8 Mr. Fumo engaged in, what Your Honor found, that they're
9 somehow irrelevant, that they can't be taken into
10 consideration, that whatever bad there is in Mr. Fumo, that
11 there can be no good, in the government's view.

12 Your Honor has to have a far more broad and fair,
13 balanced view of Mr. Fumo. And we submit that there is a
14 basis for a significant variance here, based upon his
15 extraordinary ill health when combined with his age and, as
16 Mr. Cogan will address, the unique good works that he
17 performed for the community here.

18 THE COURT: All right.

19 MR. BUFFONE: Finally, Your Honor, just very briefly.

20 THE COURT: No, no, that's all right.

21 MR. BUFFONE: On the question of disparity in the
22 federal sentencing guidelines. I'm not going to tout my own
23 horn here, but I was chairman of the American Bar
24 Association's Committee on Sentencing; I was the founder of
25 the Practitioners Advisory Group to the Federal Sentencing

1 Commission. I went to every one of their meetings. I
2 attended all the working group meetings on the adoption of the
3 fraud guidelines. It is simply a misstatement to say that it
4 was empirically based. It was not based on the initial 10,000
5 case sample that the Commission had before it. The sea change
6 in the guidelines from the -- taking the theft and the fraud
7 guidelines and combining them into the current guideline with
8 the procedural rigor that the government attributes to it.

9 But that really doesn't matter because for 3553(a)
10 purposes, Your Honor is the determinant of how much weight to
11 give to the guidelines as one of many factors, how much weight
12 to give to the fraud tables as determinative of what the
13 sentence should be. And in the end, Your Honor must consider
14 all of the 3553(a) factors and make a finding on each of them.
15 And we submit that when you do, Your Honor, you will find that
16 a significant variance is warranted here.

17 THE COURT: Thank you.

18 Mr. Cogan?

19 MR. COGAN: Well, we're still on this case. We
20 started it a long time ago. To say that this has been a long
21 and difficult road that we've taken -- all of us -- would
22 obviously be an understatement. It's been difficult for many
23 people. It was difficult for the lawyers involved on both
24 sides. I'm sure it's been difficult for the Court. It's
25 especially difficult for the defendants in this case, Ms.

1 Arnao and her family and the people who care about her, and
2 especially difficult for Vince Fumo and all the people who
3 support him and love him and know him for the man he really
4 is.

5 When I say this was a long road, Judge, as the weeks
6 of this trial rolled into months and I found my energy level
7 heading toward the empty mark on the meter, I whispered to my
8 opposing counsel in the morning, before you came out on the
9 bench, some words I actually heard somebody else say in a
10 different context. But I said surely, in order for a case to
11 be memorable, it need not be interminable. And here we are,
12 we're still on this case. And hopefully, today will be the
13 final chapter and finally bring finality to what has been this
14 long, long proceeding.

15 But I can say that the consequences of this case --
16 the conviction, the sentence that was imposed earlier that was
17 vacated and the sentence you impose today -- those
18 consequences will be with my client till the day that he dies,
19 a day that the prosecutors in this case undoubtedly believe
20 should take place in a federal prison. For, in this case --
21 and I want to talk about the nature and circumstances of the
22 offense in a short while -- in this case that does not involve
23 bribery or extortion or selling of one's office, the
24 government continues to press for a sentence that they know
25 substantially raises the odds that Vince Fumo leaves prison

1 only in a coffin -- that's how serious they think this case
2 is.

3 I've been appearing before you, off and on, in cases
4 since the late 1990s. I looked it up a week ago. I won't
5 mention the names of the cases; they are long forgotten, I'm
6 sure. And despite your genial manner, I know that you don't
7 like showboating or exaggerations. You certainly don't like
8 it when lawyers misrepresent things to you. And so I'm going
9 to try to be moderate in my language here today, temperate in
10 what I have to say, but there are a lot of things -- I'm not
11 going to take, probably, as long as my opposing counsel in
12 this case, the two of them combined --but things about this
13 about this case that need to be said.

14 And even though, as always at a sentencing, I'm
15 mindful of the fact that I'm addressing an audience of one;
16 the one in front of me and not the one behind me. But based
17 on everything that everybody has said in this case and based
18 on my own knowledge of this case and the Court's and everybody
19 else's, I can't be unmindful of the fact that this is a matter
20 of great public interest. All you have to do is look around
21 and read the blogs and the newspapers and all the rest of it.
22 And you do, too. You know that, and you commented on that
23 last time, at the original sentencing, and also, some of the
24 press coverage that could have affected how some people saw
25 this case as opposed to what we saw in this courtroom.

1 I'm not going to comment too much about, at this
2 moment, the kind of coverage in this case. It is sufficient
3 to say that the power of the press is just that: powerful.
4 And it starts a conversation, frequently, that causes a herd
5 mentality. And I hate when people generally attack the press.
6 I do mean that; I'm not being disingenuous and I'm not trying
7 to curry favor to anybody. I don't like when lawyers, every
8 time they hear something said about them, they make sure they
9 send out a threatening letter that we're going to sue you if
10 you do it. I've never done that, although there are things
11 that I read about clients and friends that got me upset.

12 The press, at its best, educates. It can be
13 enlightening. And there's another side to it, as well, as
14 much as I would always stand on the side of people who defend
15 its precious right, freedom of the press. The other side is
16 that it can be mean-spirited, it can be selective in its
17 reporting. And what's important are the consequences of that.

18 The government has taken the position, in this case,
19 that there is a certain kind of public expectation, and I
20 agree. On the other hand, what -- when we look at the
21 salutary sentencing goal of trying to, as part of the
22 evaluation you must do under 3553(a)(2), in addition to all
23 the other things you must consider in trying to determine what
24 the appropriate sentence should be, you have to take into
25 consideration the need to promote respect for the law, which

1 is quite different than trying to determine which way the
2 winds of public opinion are blowing at a given moment.

3 A subject that was so effectively addressed by John
4 Kennedy years ago, that what is right is not necessarily what
5 is perceived to be the most popular at a given moment. That
6 was the book "Profiles in Courage" that he wrote, that he won
7 the Pulitzer Prize for, long before he became President.

8 The government has fought mightily in this case to
9 tell us what the public demands. What the public demands.
10 And they've lectured everyone about public expectations and
11 they somehow equate that with what you should do in trying to
12 determine what is a sentence that would adhere to that concern
13 that you must have about promoting respect for the law. The
14 lecturing in this case, quite honestly -- I never like to use
15 too many superlatives -- is nothing like anything I have
16 experienced in my career, which is already long and not
17 totally uneventful. And I never had the chance -- I thought
18 about it one time -- to sit where you sit, but I know, as the
19 Court knows, that when you have things like we had in this
20 case -- things that you've experienced in your long career as
21 a lawyer and a judge -- I've seen things in this case that I
22 never expected to see, that frighten me a little bit -- and
23 maybe that was too much of a stretch to say I'm frightened
24 about it. The government's told you about how people perceive
25 things.

1 The former United States attorney in this district,
2 Peter Vaira, who, ironically, was the United States attorney
3 who indicted Fumo and Camiel and those other people back in
4 the late '70s, publicly stated in the presence of former
5 assistant United States attorneys, criminal defense lawyers at
6 a criminal law symposium right after the sentencing, the
7 coverage in the Fumo case was more of a media circus than that
8 which was experienced in the famous Sam Sheppard murder case.

9 Now, I don't know if you remember the Sam Sheppard
10 murder case. That was the guy who was convicted of killing
11 his wife in Ohio and his case finally went to the United
12 States Supreme Court and was reversed because of the fact that
13 he was prejudiced by the surrounding circumstances of the
14 media. It's what people of another generation remember as
15 that television series "The Fugitive". You know, Richard
16 Kimble and the one-armed man. But unlike in that movie, the
17 one-armed man didn't -- Kimble never eventually went to jail,
18 unlike Sheppard, who spent like ten years in jail before he
19 got a retrial and he was acquitted.

20 So public expectations take into account a lot of
21 things. And I do agree, as much as I defend, like everybody
22 else who's sensible in this country -- the need to have an
23 independent press, I can't ignore the fact that there are
24 things here that I never saw before. Now, it is true -- it is
25 true -- and we all know it, and since everybody's being frank

1 here about what's going on on the outside here -- that the
2 government was quite outspoken, expressing its dissatisfaction
3 with the sentencing last time. And it's true that the public
4 conversation out there, what a lot of people were speaking
5 about, was defined somehow by the government's sense of
6 outrage.

7 Outrage is a word that the government, in this case,
8 uses -- or a form of it -- quite frequently. You can find it
9 in all of their briefs that they filed. So many comments that
10 they've made during the course of this case. Lost in the
11 reaction after the sentencing was the reaction I gave to the
12 press immediately thereafter, when I finally decided to talk
13 to the press now that the proceedings were over; hadn't done
14 it during the trial.

15 And what I said was this. Somebody asked me do you
16 consider it a win. And I said win, my client's going to jail
17 for fifty-five months, he's been fined more than 2.5 million
18 and with prejudgment interest that His Honor has already said
19 he's going to make part of the sentence, it's going to be
20 about 2.7 million dollars. I was wrong; it's higher than that
21 and it's been paid. He paid for it. And the financial
22 consequences, as you see in the e-mails from that sentence as
23 well as the staggering counsel fees that he's had to pay to a
24 variety of lawyers over the course of so many years has taken
25 its toll. And now he gets to go to jail after being crushed,

1 having lost so much, having this terrific fall from grace,
2 having him dragged through the mud for years, this public
3 embarrassment, losing everything and what he found important
4 in life in terms of his work history. He goes to jail for
5 fifty-five months.

6 That's not a slap on the wrist. I don't consider it
7 to be a light sentence. And the reason I said that is
8 because, unfortunately, as most criminal lawyers who have
9 practiced for a long time in both the federal and state
10 system, I know something about what it's like to be in jail
11 because I visit there. The good people at FDC, the
12 correctional officers -- most of whom I just really like a
13 lot -- when I walk in, they always say the same thing because
14 I was there the very first day that that place opened. I
15 wanted to kiss the ground because I didn't have to drive to
16 Schuylkill in the morning to see a client who was facing trial
17 here in the district. And they said Cogan, you've got more
18 time in than most of the prisoners here, because of all the
19 time I spend in jail. I know what it's like just to get into
20 the place, wait an hour, an hour and fifteen minutes
21 sometimes, before they bring your client down. Maybe it's --

22 THE COURT: That, of course, is a different facility
23 from where the defendant is spending most of his time.

24 MR. COGAN: Yeah, I'm going to talk about that. I'm
25 just talking about the notion --

1 THE COURT: I've been -- I've been in prisons, too --

2 MR. COGAN: Yeah. The notion -- I'm not blaming

3 FDC --

4 THE COURT: As a visitor. Yes.

5 MR. COGAN: -- I'm not blaming FDC at all because of
6 the circumstances. I'm not talking about that. What I'm
7 talking about is the idea that when I go there and I have to
8 wait, I'm looking at the clock, I'm counting the minutes.
9 It's like going to the doctor's office and you're waiting and
10 they finally say Mr. Cogan, you go in. You waited an hour.
11 Forty-five minutes. If you're impatient like I am, that kind
12 of personality, I'm already angry. Then they put you in the
13 examining room and then you wait another half hour before the
14 doctor comes in. That's a small example of what prison is
15 like.

16 I tried to explain what fifty-five months meant to
17 the few reporters who asked me about my reaction while so many
18 of the others were over talking to the government about their
19 outrage. I said I'm doing the math quickly, I may be wrong,
20 but if he gets good time credits and he gets out in forty-
21 eight months, that's 37,000 hours of prison on top of
22 everything else that's happened to him. I do not consider
23 that a slap on the wrist, by any means. It's not a light
24 sentence. It was not.

25 I must say the sense of outrage in this case that the

1 government has described extends not only to all the filings
2 in this case and even the remarks today, but it was so
3 manifestly clear, their sense of outrage, when they chose on
4 October the 28th to file that pleading with that trove of e-
5 mails. And the government felt an absolute need to do that.
6 And they expressed their sense of outrage in their pleadings.
7 How dare this man attack a member of the press and call her,
8 in his private e-mails, his communications, his thoughts, the
9 things that he was feeling inside, which tells you a lot about
10 what it's like to be in jail, separated by 525 miles from
11 home. And how dare he do that? And, in fact, it had its
12 desired effect as it orchestrated the typical press reaction.
13 The person he was talking about, who has dragged him through
14 the mud all these years, the next day, the headline story of
15 the Daily News, the gloves are off, Mr. Felon. When were the
16 gloves ever on?

17 But what's important about this is what the
18 government next says about their outrage. And they explain it
19 in their filing. What they explained in their filing is that
20 this man, they say, has no respect for authority. In his e-
21 mails, he refers to numerous prosecutors by name, including
22 the current and two predecessor United States attorneys,
23 always in graphically derogatory terms. And they go on, their
24 sense of outrage.

25 What they don't put in the filing was just covered by

1 you in the question you asked Mr. Pease earlier. What they
2 don't cover in the filing is the connective thoughts that Fumo
3 has over the course of all these months that he's been in
4 jail. And no, he does not like the prosecutors; he is bitter.
5 He obviously is bitter. And I wish he'd either do one of two
6 things: either he express himself differently or just get past
7 it. And I don't know what would be healthier for him, to keep
8 it bottled up inside or to express himself in private e-mails
9 as opposed to the sense-of-outrage people who decide to
10 publicize it, to tell the reporter about what happened to her
11 in his private e-mails and to get her all upset about it.

12 But what he says in the connective e-mails is the
13 very subject you brought up. What's wrong with these guys? I
14 think that they're vindictive people. And I think that the
15 reason that they've taken this position with me, rightly or
16 wrongly -- these are his thoughts -- is because I turned down
17 the five-year offer. But even that's wrong. That's wrong.

18 I never brought this up anywhere. Nobody's heard me
19 talk about this publicly because I --

20 THE COURT: Well, frankly, I didn't know about it
21 until --

22 MR. COGAN: Well --

23 THE COURT: -- I came across that article.

24 MR. COGAN: -- well what I --

25 THE COURT: Last week was the first time I ever saw

1 that.

2 MR. COGAN: Yeah. And I'm going to be moderate, as I
3 said. But I'm going to tell you the truth. And Fumo covers
4 it in the e-mails they decided to publish, but he knows. I'm
5 going to tell you the truth about this because I wouldn't have
6 brought it up; I considered it settlement discussions, as
7 well. It was brought out, I heard, later on, by --

8 THE COURT: It would have been improper for either
9 one of you to bring it up. I brought it up.

10 MR. COGAN: Right.

11 THE COURT: Because I thought it's something I ought
12 to consider --

13 MR. COGAN: But -- but it --

14 THE COURT: -- frankly, and didn't know about.

15 MR. COGAN: -- it comes up -- it comes up now because
16 of what Mr. Pease just said. Mr. Pease is very quick to call
17 people liars. He's very quick to take a few words that Fumo
18 says and make it a mantra. For example, "I thought it was
19 like spitting on the sidewalk", like he was talking about the
20 offense conduct. The context that nobody seems to get about
21 even that phrase was he was talking about his secretary
22 writing checks in the basement of 1208 Tasker, rather than
23 going to the third floor, which is the private part of the
24 building. And he said, "I guess it's wrong, but it's like
25 spitting on the sidewalk." He wasn't commenting on the rest

1 of the case, but nobody seems to remember any of that in the
2 context.

3 But I want to get back to what I was saying in more
4 moderate tones. Mr. Pease, who calls everybody who has
5 anything to say favorable about Mr. Fumo -- and that's an
6 exaggeration; he doesn't quite do that -- lawyers about this
7 program -- the only reason Mr. Buffone was bringing up this
8 RDAP was to point out that nobody lied, as he wanted everybody
9 to think, when he was putting on that evidence yesterday.

10 I was at the meeting. I can't believe Mr. Pease said
11 there were preliminary discussions when you asked was there an
12 offer made. He has opened a door to this. There were
13 discussions. I was in the case for such a short time, I
14 barely had talked to Fumo yet, I had not reviewed a scrap of
15 paper yet, I had been barely past the indictment, which I
16 read. And we came into the office to see Mr. Pease, Michael
17 Schwartz -- there are no absence of witnesses to this -- Mr.
18 Zauzmer, the two agents involved in the case, including Ms.
19 Humphreys. And Michael Schwartz, who was the deputy in charge
20 of that division, was seated to my right and Mr. Lacheen was
21 with me because he was brought into the case for Fumo by
22 Mitchell Rubin. And at the meeting, they offered us
23 specifically not five years, but a cap of five years.

24 I never was going to bring this up because I
25 considered it settlement discussions, too. I didn't bring it

1 up like Jacobs did at Ruth Arnao's sentencing; I never did.
2 And there was an article, actually, in the Daily News shortly
3 after your sentencing by Hinkelman over here talking about
4 that. But I wasn't the source of information on that.

5 THE COURT: I never saw anything about it. You know,
6 that's why I was kind of --

7 MR. COGAN: A cap of five years.

8 THE COURT: But --

9 MR. COGAN: It's -- they offered a cap of five years
10 in this case, these people who talk about outrage, how could
11 you do this, this defense conduct is so horrendous. Yeah,
12 they figured if they had to put some additional time in it,
13 they would not want it to be that low.

14 But the other part of the conversation, where they
15 specifically -- and no person who was at that meeting would
16 ever take the witness stand under oath and say otherwise,
17 would not say what Mr. Pease said to you. Now, he's not under
18 oath, but he's talking to the Court -- who has set himself up
19 as a paragon of virtue in this case. And it was offered and
20 it was a cap. They couldn't argue for more, but as part of a
21 see plea (ph.), we could argue for less at that point. Where
22 is the outrage, Fumo says in his e-mails. He says I'm
23 outraged by their outrage. Michael Schwartz is not going to
24 come in here and lie about that, for sure.

25 In addition to that -- I'll say it now, too, since he

1 brought this up -- a few weeks later, when the deadline for me
2 to accept the offer was running out -- because I was in to see
3 the United States attorney with some other lawyers from
4 California about a matter, seeking declination of a
5 prosecution. Pat Meehan called me into his office, the U.S.
6 attorney, and he urged me to take the deal. Now, people are
7 not hearing this when Mr. Pease says well, there was some
8 preliminary discussions, no offer was made in this case. Now,
9 if this was Fumo who just got up and said something that
10 everybody knows is false, we know what Mr. Pease would be
11 saying to this Court about what a liar and perjurer he is.
12 Enough on that.

13 Now, it is true -- and this is important -- in terms
14 of the public's expectation and promoting respect for the
15 law --

16 MR. COGAN: Now, wait a minute. Before you -- before
17 you go into that. As I suggest to Mr. Pease, I'm not sure
18 where this fits into anything, though, in terms of my
19 consideration of the guidelines -- not the guideline. My
20 consideration of the sentence, which includes the guidelines.
21 I just brought it up because I thought it maybe fit in with a
22 little bit of a disingenuousness -- you know what I'm
23 saying -- on the part of the government arguing for fifteen
24 years now, at this time. And the only thing I could conclude
25 was because of all the expense of the trial, which is

1 tremendous, that they have now changed their position.

2 MR. COGAN: Well --

3 THE COURT: But I don't know where that fits into
4 things, but --

5 MR. COGAN: -- well, it fits --

6 THE COURT: -- it's just something that struck me and
7 I wanted to talk to the parties about it, see if it were true
8 or not.

9 MR. COGAN: -- it -- where it fits in is the
10 government saw fit to take out of context thoughts that Fumo
11 had explaining why he felt the way he did about them. And
12 they bring it up, all the names he's calling them. But I --
13 I'm going to move on.

14 It's true that after the sentencing, the press -- and
15 this is important in terms of public expectations here -- was
16 critical -- I'm trying too hard to be moderate -- they went
17 into a feeding frenzy on this. There were people from the
18 press, columnists, who actually demanded that the Third
19 Circuit reverse the sentence. There was one columnist, the
20 one that Mr. Fumo was talking about in his e-mails, who urged
21 her readers to write to the Solicitor General and demand that
22 the Solicitor General approve the appeal that the prosecutors
23 were asking for in this case, and she provided the fax number,
24 actually, for the Solicitor General. Her right; that was her
25 position. But I've got to tell you, for the last couple of

1 years, since this experience, when I thought I wasn't going to
2 have to come back to it again, I've thought a lot about the
3 wisdom of the founding fathers, who strove to erect an
4 independent judiciary to put barriers between judges and those
5 who would seek to influence their independent judgment. And
6 we've seen a lot of that in this case.

7 The government presented last time they filed --
8 actually, the first filing this time around -- fifty letters
9 that they received from people to try to counterbalance the
10 ones that you received on behalf of Mr. Fumo, letters that
11 came in following the sentence in the summer of 2009, letters
12 that followed the kind of heated press coverage that I just
13 described, press coverage that included columnists' opinions
14 about the sentence is supposed to be the guidelines. The
15 guidelines were what the sentence is supposed to be. We heard
16 that from Mr. Contino yesterday. He thought, based on what he
17 knew, that the appropriate sentence was the guidelines. I
18 asked him that yesterday. Obviously not knowing -- the press
19 not knowing, or Mr. Contino knowing -- the huge sea changes,
20 Mr. Buffone put it before, that's taken place in terms of
21 federal sentencing law since 2005, when in Booker and Fanfan,
22 the United States Supreme Court invalidated as
23 unconstitutional the mandatory nature of guidelines. We all
24 know that.

25 As you know, post-Comco (ph.) cases in the Third

1 Circuit emphasize now, more than ever, that a trial judge's
2 sentencing determination should be viewed with great
3 deference. And they explain why. And we've always known why.
4 And that is the trial judge gets to experience the case
5 firsthand. The judge sees the case unfold before him in real
6 time. He gets to see the witnesses, he gets to see the
7 circumstances of the offense and he gets to make a judgment
8 that doesn't derive solely from a cold record in the case.
9 That is why the sentencing judge's sentence should be not
10 tampered with so readily when it comes to the substantive
11 reasonableness evaluation that some other court must make
12 later on.

13 It is interesting that --

14 THE COURT: That issue wasn't before the circuit
15 court.

16 MR. COGAN: That's right; it was not.

17 THE COURT: Yes.

18 MR. COGAN: It is -- right. But this is not a
19 criticism of the circuit.

20 THE COURT: No, no. I know it's not. I --

21 MR. COGAN: -- I --

22 THE COURT: -- I mean frankly, I goofed -- I goofed
23 on the guidelines. I readily admit it. And I'm sorry that I
24 did. But -- although, I guess the dissenting judge didn't
25 think I did, but, nevertheless, I didn't follow the procedure.

1 I regret that.

2 MR. COGAN: Yeah. Yes. And on that subject, one
3 need no -- look no further than even recent decisions by the
4 United States Supreme Court which emphasize how far we've come
5 since 2005. In Pepper v. United States, decided about eight
6 months ago, the Supreme Court emphasized that the guidelines
7 are just the starting point, just the initial benchmark. They
8 must be given respectful consideration by the court, but in
9 the opinion written by Justice Sotomayor, she pointed out, for
10 the majority, that the sentencing judge still can tailor the
11 sentence in light of all of the 3553(a) factors to come up
12 with a sentence that takes into account that every case is
13 unique. Every case is unique and every individual offender is
14 unique, which also gives one pause about how do you decide
15 disparity issues, since every case -- especially this case --
16 can be different and unique so that, according to the Supreme
17 Court in that case, the sentence fits the offender as well as
18 the crime.

19 Getting back to our case, the government's fifty
20 letters that it -- that it submitted points out what we're
21 talking about in terms of the examples from some of those
22 letter writers about how things can get so confused and
23 distorted out there, but they're asking you to consider it.
24 For example, one writer -- and I don't blame that writer,
25 based on what that writer probably read on blogs and

1 newspapers -- said how could the judge do that; it's less than
2 "the mandatory minimum guidelines". Another writer writes in
3 and says the forty-eight months that Fumo has really been
4 sentenced to -- excuse me -- "the sentence in Fumo" -- meaning
5 the fifty-five months -- "is the functional equivalent of two
6 years in jail", obviously not knowing that parole was
7 abolished more than two-and-a-half decades ago in this
8 country. I'm not criticizing the writer or the right to write
9 the letter. I say this in terms of public expectations.

10 There's another letter that equates what Fumo did to
11 Bernie Madoff, thirty-seven billion dollar Ponzi scheme fraud
12 that wiped out many people and substantially hurt many more.
13 And then the last one, in terms of understanding out there the
14 offense conduct in this case. To let Fumo walk out of jail
15 after forty-eight months -- person had in mind the correct
16 number, taking into account for good time served -- would
17 allow Fumo to return to the street -- essentially; they
18 weren't his words -- and reap the benefits, the rewards of his
19 criminality. Obviously not knowing that there's no pot of
20 gold waiting out there in this case. Obviously not knowing
21 that this is not a case of selling office or bribes, where
22 there's going to be safety deposit boxes brimming with cash.

23 He was investigated -- as I said yesterday when the
24 agent was on the stand -- up, down and sideways. I mean if
25 this guy took a bribe, you would have heard about it. And

1 especially when you consider, when you talk about reaping the
2 benefits of misconduct, the man who's the major point man
3 along with the governor for casino gambling legislation.
4 Everybody knows the ability for him to influence licensees.
5 This major fraud in this case -- that the government
6 explains -- on the Senate, which Your Honor correctly pointed
7 out not a penny went into his pocket. You had your other
8 observations about the indirect benefits that he got. For
9 sure, there's no question about that. There is no pot of gold
10 out there for him. And that's got to be taken into account.

11 We talked about the nature and circumstances. You
12 made findings about that before, and they were right. There
13 is no question about it. And all I'm saying now is there are
14 people out there that thought he stuffed his pocket, that he
15 sold his office. The government says it wouldn't be any
16 different; if he got millions of dollars in bribes to give
17 people casino licenses, that's no different than this offense
18 here. The government says you can trust us because we don't
19 spin when we say the mantra for the case was "spitting on the
20 sidewalk". Now, this new subject coming up where you ask a
21 question and the answer that's given, I tell you, it is so
22 false about the offer that was made. And to encourage these
23 beliefs out there, what the nature and circumstances of the
24 offense were in this case, feeds that frenzy even more.

25 And now we come to the next base of the case, and

1 that's the e-mails. The e-mails. And perfect example of how
2 the e-mails and the way the government chose to characterize
3 those e-mails, can get things twisted, how they can distort
4 perception in terms of people who are looking for a sentence
5 that would promote respect for the law. This is a great
6 example, though, of how the government chose to proceed in
7 this case. And it is a theme that comes up in the e-mails
8 form Fumo that they chose to rely on so heavily about his
9 state of mind, from the very beginning in this case, the way
10 the government chose to proceed.

11 A 264-page indictment with frequently hyperbolic
12 language -- you talk about class warfare and make sure the
13 jury knows he owned five houses, he owned a bank, he was a
14 rich man, he had this -- that is all said in the indictment
15 merely to say and oh, yeah, his favorite saying or something
16 like that was OPM; now we've got the motive. And so he used
17 Senate resources and staffers to satisfy all his needs and
18 wants. It was an indictment -- and I'm going to say it now,
19 since the government is taking great license to tell everybody
20 how bad everybody is and what the guy is thinking when he says
21 certain things when he's talking about my client. It seemed
22 more intended, frequently -- and forgive me, Judge, if I am
23 getting a little less than the temperate approach that I said
24 that I would stick to before -- but it's in terms of Fumo's e-
25 mails, seemed intended as a press release that we more

1 associate with a mudslinging political campaign these days,
2 rather than a charging document that merely puts somebody on
3 notice of the charges against them and to let him know what he
4 had to defend against.

5 That's not all, in this case. You probably didn't
6 see it because -- you're probably the only one that didn't
7 because you were focused on the task before you during trial.
8 The last day of trial, we had a hearing in the afternoon on
9 the question of bail, which you increased. And there, with
10 the entire press corps in attendance -- so everybody wanted to
11 know what was going to happen, obviously; this is big news, he
12 had just been convicted that morning of all counts. The
13 government prosecutors had the agent in charge of this case
14 walk over conspicuously with a white envelope that appeared to
15 be sealed, letter size, and handed it, in that fashion, with
16 everybody looking, to Mitchell Rubin.

17 We all know about grand jury secrecy. We know about
18 the rules and policies behind that. We also know you don't go
19 out and tell people that someone's gotten a target letter, but
20 it had its desired effect because I walked outside the
21 courtroom with Jacobs and Mitchell Rubin because Fumo and
22 Arnao had been taken out the side door for pre-sentence
23 investigation interview and they went with Mr. Lacheen. And
24 what happened? The press asked the question. From the front
25 door of the courtroom we were in, was that a target letter,

1 did Rubin get a target letter. And the press -- not one who
2 was there will tell you anything different -- followed us all
3 the way down the steps. It's their right, I'm not criticizing
4 the press here. They have different rules and different
5 ethical considerations than we as lawyers, and especially
6 people from the Justice Department have. They followed us all
7 the way down the steps, down the elevator, out the front
8 steps, still asking the question. You don't whether you want
9 to just put your jacket up over your face, you don't know how
10 to react to it. I don't blame the press for it. That's not
11 all.

12 These smart prosecutors, they know the law. They
13 filed a motion in this case designed to have its desired
14 effect. To introduce Fumo's prior prosecution from 1979 that
15 resulted in a judgment of acquittal. They knew that no judge
16 was going to grant that motion. And they did the argument
17 outside the presence of a jury, which they'd have to. Of
18 course, we're having live coverage everywhere; we've got an
19 unsequestered jury. And sure enough, headlines, lots of noise
20 about his prior prosecution reminding everybody all over
21 again. And at least one juror has already admitted --
22 consensual tape, I found out, with the reporter who talked to
23 her -- that she found out about this. Not going to go over
24 the propriety of any decisions here or anywhere in any court.
25 And it had its desired effect.

1 Now, lastly, on this stuff with the jury -- and I'm
2 not questioning anything at all. I'm so unhappy that he used
3 the words "corrupt". And I'm so unhappy that he used the word
4 "dumb". The jurors sacrificed a lot and worked hard, albeit
5 they didn't go our way at all in the case. But in the context
6 of his e-mails, whether he used the right language or not, it
7 wasn't intended for public consumption. It was the
8 prosecutors made it -- put it out there, letting the jurors
9 know about what he was thinking.

10 And what he was thinking was simply this. The last
11 day of trial, if you remember, before the verdict was in, we
12 had the Twitter juror and we filed a motion the Sunday before
13 that. And he knew all about it. And the irony is that we
14 found out later on that as soon as he heard about it, this man
15 who had a front row seat being educated about obstruction of
16 justice found out there was going to be a court proceeding the
17 next day. He just happened to hear the news that night, the
18 only time he heard about it in the trial -- this is in the
19 context of Fumo talking about the jury, not -- this is not a
20 screed from me. This is about understanding his mind when he
21 says this about the jury. That he went upstairs and got rid
22 of all of it. He deleted it. We found that out at a hearing.

23 And then the biggest part is the post-conviction
24 revelations confirmed, in part on tape, independently fact-
25 checked, that when the jurors came in that day and saw he

1 wasn't there, every juror in the case said -- every juror knew
2 about this from the press coverage before they got to court
3 that day. Truly, a unanimous jury. Not one person did what
4 you repeatedly said: Hand a note to Matt Higgins, don't
5 worry, you've done nothing wrong if you hear anything outside
6 the courtroom -- now they find out before the official verdict
7 about the ogre defense lawyers calling on the carpet through
8 an official proceeding that's all over the news that night,
9 bring him in for a hearing.

10 Now, that's enough on that, but that is the context
11 of his strong feelings about that. And I wish he had used
12 different language, but who should ever even publish anything
13 about that to make the jurors feel badly?

14 You know, when you're in jail, they've got control of
15 your body and the certainly have control of your mind. Now we
16 find out that they have control of your words, too.

17 THE COURT: Well, he knew that. He was warned of
18 that. This is --

19 MR. COGAN: That's right.

20 THE COURT: -- one of the dumbest things I've ever --

21 MR. COGAN: I agree.

22 THE COURT: -- frankly. You can't --

23 MR. COGAN: I agree.

24 THE COURT: -- you can't defend him on that --

25 MR. COGAN: I'm not -- no, no --

1 THE COURT: -- doing blabbing.

2 MR. COGAN: -- no, no, no. I'm not -- I'm
3 defending -- here's what I -- I'm not defending that.

4 THE COURT: No, I -- listen, I agree with you that
5 the publishing, by the government, at least -- some of these
6 things -- there were so many things there. I didn't read them
7 all. But it was, frankly, embarrassing to read about his
8 personal -- some of his personal observations. Not about the
9 court system or anything like that --

10 MR. COGAN: Well, you --

11 THE COURT: -- but about his conversations with --
12 with his daughter, for God's sake. This is private stuff.
13 And it was a very moving kind of thing, really. And then
14 other things that were just --

15 MR. COGAN: Well --

16 THE COURT: -- I don't know. I didn't particularly
17 like that. I don't know why they chose to do that. But they
18 did it. It hasn't changed my opinion of Fumo's character,
19 which is not that high, anyway. So it didn't do anything to
20 change my opinion.

21 MR. COGAN: Well, I want to say this, that I wasn't
22 suggesting that they didn't have the right to look at his
23 email.

24 THE COURT: They did. It's -- but the basis for that
25 is prison security. That's the whole basis for it.

1 MR. COGAN: Yeah.

2 THE COURT: We're going to search your e-mails, we're
3 going to search -- you don't have any privacy. We're going to
4 search your mails.

5 MR. COGAN: Yes.

6 THE COURT: It's a security matter.

7 MR. COGAN: Yeah.

8 THE COURT: And that's the primary concern. Now,
9 certainly, it's out there, open and clear that he's going
10 to --

11 MR. COGAN: Well, there --

12 THE COURT: -- it's going to be published.

13 MR. COGAN: Yeah, but the point I'm making here is
14 this. They did it because they could. He waived the
15 privilege.

16 THE COURT: Yes, he did.

17 MR. COGAN: And so what happens is they read e-mails
18 to his kids, heart-wrenching e-mails about absenteeism, tender
19 things that he says; e-mails with his girlfriend, his fiancée,
20 of the most intimate nature -- they read it -- it's the
21 functional equivalent of pillow talk. The government did it
22 because they had this tough job to do. They had to read his
23 e-mails because, not that they thought that Carolyn Zinni and
24 he were planning a jailbreak, but to let him know that they
25 also want to know what's in his mind. Big Brother's always

1 going to be watching, wherever you are. It's nothing about
2 prison security or anything like that --

3 THE COURT: Well, at least in this case, Big Brother
4 gave a sufficient warning.

5 MR. COGAN: Yeah, yeah. Warning is fine. Remember
6 the government said when, in the course of this case, my
7 client -- who admits that he's sick, admits his psychiatric
8 problems and jealousy -- had a staffer send him what Dottie
9 Egrie was putting on her e-mails? They called it creeping.
10 Creeping.

11 So I probably went on too long about that. This
12 Court, in this case, made findings about the nature and
13 circumstances of the offense. You pointed out then, as you
14 did now, what was wrong. You pointed out, even when you said
15 he never put a penny in his pocket when the Senate fraud came
16 around, he was wrong; like a lot of people in his business,
17 they get a sense of entitlement and they do all kinds of
18 things they shouldn't do. You pointed out that it was not
19 bribery, extortion, it was not -- certainly not a violent
20 offense; murder, rape or anything like that. And you talked
21 about that. And I hope they're the same findings that you
22 make today, but I'm not in a position to know that until I
23 hear them.

24 Also, in terms of the nature of circumstances of the
25 offense, the government says the nature of circumstances of

1 the offense is that he destroyed Citizens' Alliance,
2 forgetting how Citizens' Alliance got started in terms of all
3 the things they -- big things they did; his litigation against
4 PECO, the seventeen million dollars that came in. There's
5 public record of this, which the Court can take judicial
6 notice of.

7 The conservator appointed by the Commonwealth Court
8 to look after and consider and examine the affairs of
9 Citizens' Alliance wrote a report. And the report says quite
10 a bit.

11 The report talks about the strategic foresight of
12 Citizens' Alliance in the Passyunk Avenue revitalization.
13 They point out the charter schools -- not a hint of scandal in
14 any of that stuff. The properties owned by the Alliance are
15 its most important asset and a very positive legacy which
16 should be prepared. It talks about all of the properties
17 strategically located which, in essence, without my reading
18 it, the sum -- the whole becomes greater than the sum of its
19 parts where it brings people in. It's bringing business in.
20 It stabilized the neighborhood.

21 The question posed by the conservator -- who's Paul
22 Levy, appointed by the Court, who is the well-known head of
23 the Center City Districts, cleaning up streets and stuff like
24 that -- where did most of the money go? The answer is --
25 into services and into real estate owned debt-free by wholly-

1 controlled subsidiaries of the Alliance. In the absence of
2 short-term construction loans and long-term mortgages gave the
3 Alliance the flexibility to offer initial rent abatements to
4 induce quality tenants to the street, an effective strategy
5 for revitalizing a transitional neighborhood.

6 If you listen to the way the government talks about
7 this case, it went to tools and other things like that -- the
8 polls which were paid back, obviously. You heard the
9 testimony. The jury probably rejected it; we don't know
10 exactly based on the verdict in this case. But it has to be
11 considered and you will consider it in terms of the nature and
12 circumstance of the offense.

13 If he had disclosed -- if he had taken a salary for
14 all the work that he did for Citizens' Alliance in terms of
15 the nongovernmental money that came in, there would be no
16 concern about it. There would be no concern with the Internal
17 Revenue, and it would have been disclosed on the record and if
18 instead of taking the tools and the food which he says even at
19 your last allocution with him was wrong and I shouldn't have
20 done it. That's the nature of the circumstances of the
21 offense.

22 And finally, then, the history and characteristics of
23 the defendant: both yesterday and today, the government
24 concedes that he did many good things. At the last hearing,
25 you asked that of Mr. Pease. I thought when you said, well,

1 he did really good things, didn't he? -- I thought it was a
2 rhetorical question. I thought it was one of those things
3 that my old dad used to say -- the question answers itself.

4 Well, he had a different view when you first asked
5 that question. You asked it in the context of -- I think it
6 was page 220 -- no, actually it's 108 and 109. You say, after
7 Mr. Pease says, "One of the remarkable things when you look at
8 these letters that almost none actually refers directly to
9 anything Fumo gave personally of himself." And then, you
10 asked the question after that, "Is there any debate -- is
11 there a debate" -- going on to page 109 and this will be the
12 other counsel to raise -- "is there a debate as to whether he
13 did more than the average legislator accomplished? Is there
14 any arguing about that, or don't we know from the record?"

15 Mr. Pease's first reaction was, "Well, I don't know
16 what? I don't know that I can say what average legislators
17 accomplish, but I will say this" -- and you interrupted. And
18 you said, "I know that you have always said -- you and Mr.
19 Zauzmer and you know, in fairness, the government has always
20 said that he's accomplished quite a bit here." And then Mr.
21 Pease says, "Yes, we agree." After saying,
22 "I just don't know -- I just don't know."

23 Now, understanding at least what the Court's mind was
24 back then and understanding what those letters make so
25 abundantly clear about his list of accomplishments -- he did

1 many good things. That's his position.

2 So, in terms of this case --

3 THE COURT: If you look at the pre-sentence report,
4 that in itself sets forth on six pages his accomplishments.
5 But the issue on that and it is as the courts have expressed,
6 is that just the normal course of business -- the normal thing
7 which a legislature does?

8 Now, before you address that, Mr. Cogan, let me tell
9 you that there has been no testimony about as to a normal
10 legislator does. I know that on my own research that there is
11 no definition of what a legislator's duties are. The
12 constitution of Pennsylvania gives no definition as to the
13 duties. The Pennsylvania code gives no definition to their
14 duties. And I know just being around for a long time that the
15 constituent services thing came into being maybe ten or twenty
16 or thirty years ago, but it wasn't when I was a young man.
17 But there's been nobody in here to tell me what the heck is
18 all this stuff? So I'm left here in a vacuum. I'm left with
19 this long list of things that he accomplished. In the pre-
20 sentence report, page after page I'm with nobody telling me
21 that that's not correct. That's what he did.

22 So, I'm sort of left in a position that I don't know
23 what a legislator's duties are. They've not been described to
24 me, but this report says he did good stuff.

25 MR. COGAN: But, Judge, by the way --

1 THE COURT: And I've accepted that report. I mean,
2 that's the report that's been provided to me by the pre-
3 sentence officer. And I've accepted that report.

4 MR. COGAN: Perhaps I can be of help here?

5 THE COURT: Yeah, go ahead. I brought it up for you
6 to address. And I know that one witness testified he did
7 it -- it wasn't particularly helpful. Testified she said he
8 did more than anybody else, but --

9 MR. COGAN: Well. I think I can be of help just by
10 referring the Court back to, you know, what the duties of a
11 legislator might be in the context of what Faber said when he
12 talked about what's a proper expenditure of senate funds --

13 THE COURT: Um-hum.

14 MR. COGAN: -- he said anything that constitutes a
15 legislative purpose which would include policy, legislation,
16 and constituent services. And that's proper legislative
17 service. And in addition to that, you see the letters that
18 came in from everybody --

19 THE COURT: I know there are letters that clearly
20 deal with something other than his services, but I was talking
21 about the one that seemed to be -- grow right out of his job
22 and whether they are exceptional or -- should be considered.

23 MR. COGAN: Well, we know in Serafini what the court
24 said in Serafini. And it's interesting that in Wright --
25 United States v. Wright --

1 THE COURT: Um-hum.

2 MR. COGAN: -- then Judge Alito, now Justice Alito,
3 said we never have read Serafini to mean -- and I'm just
4 talking in terms of public works now --

5 THE COURT: Yeah.

6 MR. COGAN: -- we never read Serafini to mean that an
7 elected official who's doing duties that are part of his
8 functions can never earn even a departure -- because we're
9 talking about departure there.

10 THE COURT: That was talking about departure, yeah,
11 in the Serafini case.

12 MR. COGAN: Yeah. A departure -- as long as he does
13 above and beyond, it can be considered. That's the language
14 in Wright. And in fact, even in the Third Circuit's decision
15 in Fumo here, the one that resulted in a remand, they say we
16 don't have to reach that here --

17 THE COURT: Right.

18 MR. COGAN: -- because it's clear that the Court has
19 far more discretion --

20 THE COURT: Right.

21 MR. COGAN: -- if this comes under basically the
22 label of a variance for the reasons that we all understand by
23 reading all the case law.

24 When I say that Fumo's good deeds -- just the public
25 deeds alone -- in terms of the 260 some letters that discuss

1 what he did, what he accomplished, and how it's more than
2 others did --

3 What we did in this case -- we weren't going to
4 submit all those same letters again. We had a lot of people
5 who wanted to write new letters. And you heard that. You
6 don't hear any witnesses, you know, who are going to testify
7 about the things they testified to before. You credited what
8 was said last time, and I hope you still credit it in terms of
9 the extraordinary -- extraordinary -- and there's just no way
10 to minimize this -- range of accomplishments of this man.
11 What we did was we took a good portion by categories and we
12 attached it to one of our filings about this -- we prepared
13 summaries of some of those letters to make it easy for us to
14 go through rather quickly. And the -- you remember what the
15 letters were before. You remember Rendell saying, look, he
16 disgraced the profession, I won't forgive him for that but
17 there are other things that should be considered as well. And
18 he talked about the extraordinary nature of my client's
19 contributions, which I know you've read. He talked about --
20 he was a man who stood up and for the little people when they
21 often had -- am I running out of time?

22 THE COURT: Yeah, I'm going to ask you to wrap up in
23 five to ten minutes.

24 MR. COGAN: Okay. Let me just get these summaries.
25 It will be easier.

1 Just from last time in terms of public works, and
2 this will be easier when I look at -- and we're talking
3 about -- there are categories that we talk about taking
4 unpopular stances -- what Malcolm Lazin said about standing up
5 for gays when it was unpopular to do so. Exceptional public
6 service -- letter from Brian Abernathy, a staffer for City
7 Councilman DiCicco: "Most politicians are good talkers. They
8 talk about problems. They study things. Unfortunately, all
9 of us have come to expect this type of attitude from our
10 elected officials. Vince Fumo is different. He identifies a
11 problem, terms a course of action and gets it done." David
12 Cohen: "During a period of intense hostility for much of the
13 rest of the commonwealth, he was our protector."

14 From Nick Benadetis (ph.), who's a Cabinet member for
15 then-Governor Thornburgh: "I cannot think of one major civic
16 activity in which I have been involved, from the development
17 of the Pennsylvania Convention Center to the completion of
18 Limerick Power Station to the development of the waterfront
19 along the river, that would have been possible without the
20 support received from Vincent Fumo." John Estey talks about
21 the things that he did -- who was the former chief of staff
22 for the governor. Bob O'Donnell said, "He was the one when
23 Philadelphia was on the verge of financial collapse and the
24 Rendell administration was trying mightily to restore things
25 which they very effectively did -- he was the one, the hero,

1 for the PICA litigation, and it wasn't easy because he had the
2 legislation -- he had to use the power of persuasion but also
3 his reputation to convince people that this is the right thing
4 to do.

5 As Rendell said, I was looking for these I quote
6 "Even more impressive to me is the fact that he worked
7 tirelessly to help and protect the poorest, the most
8 vulnerable citizens of Philadelphia, many of whom did not live
9 in his district and therefore could not vote for him and
10 almost all of whom did not have the wherewithal to contribute
11 to his campaign, et cetera."

12 Governor -- John White talks about his work around
13 the country in restoring financial stability -- he's never
14 really worked with anybody like Fumo.

15 Letter from Thomas Wrigley, former Congressional
16 staffer for the mayor: "I have worked for three U.S.
17 Congressmen in my early professional life and observed the
18 Congress and the Pennsylvania State Legislature for decades.
19 I have to say that Vince Fumo was the most effective
20 legislator for good that I have ever met."

21 You heard from Malcolm Lazin. Jeffrey Rush:
22 "Senator Fumo's use of power was peerless. When he used this
23 power on behalf of the constituents, which he has countless
24 times over the many years, the results were incomparable."

25 The guy named Treacy: "In my view, there is no

1 public official or public employee who has done more over the
2 span of his career to improve the quality of life and economic
3 well-being as Senator Fumo did."

4 Former Senator Zemprelli said, "If I thought of the
5 legislator as a forest, Fumo beyond anybody else was the
6 tallest tree in the forest.

7 His range of accomplishments -- not just because
8 these people are saying it -- speak for themselves. His range
9 of accomplishments, as I said last time, is staggering over
10 the course of a career. What did Fumo say to put it in
11 context -- all I had to do was show up and vote. He wasn't
12 denigrating the work that he did. He said that's all you have
13 to do to earn your salary. He said, the job is what you make
14 of it -- what you make of it. So all these things that
15 he did -- I'm not only talking about the Citizens' Alliance,
16 the Pennsylvania Convention Center, the work that he did with
17 PHEAA -- Pennsylvania Higher Education Assistance Program --
18 he didn't have to do that. It's a 1.3 billion dollar student
19 loan program. He was involved in it.

20 John Egan from the Girard Trust said that he served
21 on the board -- John Egan was former candidate for mayor of
22 Philadelphia, a Republican -- he said, he served on the board
23 of Girard Trust, he even came during the trial on his Friday
24 days off to our board meetings and he participated. He always
25 put the children first. He never did anything improper. He

1 devoted countless hours. When the government says that what
2 he did was not as big as everybody else says because he was
3 out of town all those times, you pointed out last time, you
4 know, we've gotten ourselves into a pickle. I mean, we got
5 all kinds of electronic devices and they refer to him as R2D2,
6 if you remember. He's always got an electronic device.

7 People in his office like Chris Craig said he was
8 always working. That doesn't mean he's working every minute.
9 It means that he's always on. That's what Rendell said in his
10 testimony at trial: "He was always on, like me. I can't
11 tell -- I can't tell you every minute of the day that he
12 worked, but I can tell you that I never had any problem
13 getting a hold of him. He would get back immediately and
14 discuss and work on the city's problems and anything else we
15 had to deal with."

16 Person after person after person.

17 I'm going to wrap this up. I think it was Emerson
18 who said that a person is entitled to be valued by his best
19 moment. And there have been many, many best moments that span
20 the course of an incredible public career. We don't have to
21 go through all the achievements again; the Court has read all
22 about that. I was struck last time -- I think I made
23 reference to it -- by a letter that Robert O'Donnell's
24 distinguished wife Donna Gentile O'Donnell wrote. And when I
25 read it last week I thought of what I thought last time when I

1 read it but didn't quite say it before you. She said, "All
2 that he did, all the good that he did and the good person that
3 he really is -- this has really been like a Greek tragedy how
4 he has suffered as a result of his own conduct."

5 And when I read it then, being somewhat of a person
6 interested in Shakespeare, I thought of Greek tragedy -- I
7 thought of Caesar, Mark Antony speaking at Caesar's funeral.
8 "The evil that men do lives after them. The good is oft
9 interred with their bones. So let it be with Caesar."

10 This man with all these best moments over the
11 years -- I certainly hope that we don't forget all the good
12 that he did. Whether you want to characterize it as evil, the
13 things that he did, I think the Court put the offense conduct
14 without condoning it last time in its proper perspective and
15 how so much of what happened in this case is self-inflicted in
16 terms of the wounds that he has suffered.

17 But finally, when you consider balance here, all the
18 things that have happened to him -- giving up the pension, the
19 law license, all those other things -- you read in his e-mails
20 that he's nothing but worried about money. The e-mails -- and
21 I can't go into them because I didn't bother to take the time
22 to do -- we got off on a tangent -- the ones we published
23 about his fears, about his -- would he even have enough money
24 to fill a tank on a yacht if he could do it again -- the full
25 range of emotions that you see in prisoners from one day total

1 desperation -- the next day daring to dream.

2 And I suggest that the sum total of all the great
3 works that he did -- that showed his good heart, his great
4 accomplishment -- far outweigh the total offense conduct in
5 this case. And I said it last time -- I say it frequently at
6 sentencing, but it applies always. The resounding words of
7 Beccaria from the eighteenth century, I believe, who said when
8 we over-punish somebody, we punish that portion of the person
9 that is good and decent as well as that portion of the person
10 that is guilty.

11 I don't know if you read his e-mails whether he
12 thinks he's ever going to get out of this alive. He talks
13 about being seventy when he gets out to even go into a half-
14 way house and he has now this fear of his own mortality, which
15 is justifiable in terms of his health.

16 I hope -- I really do, that you do what you did last
17 time. The punishment has been overwhelming. If you read our
18 submission that included the other e-mails, you can see what's
19 really going through his mind. And it was overwhelming
20 desperation about his situation, crushed by what has happened
21 to him with little hope that he's going to have any kind of
22 decent life later on if he ever gets out alive.

23 Thank you.

24 THE COURT: Okay. Thank you.

25 MR. ZAUZMER: May I make a legal objection, Your

1 Honor?

2 THE COURT: Yeah.

3 MR. ZAUZMER: And I'll just take two minutes, I
4 promise.

5 THE COURT: Yeah. Come up here. The defense ran
6 slightly over so you'll entitled to a little bit more.

7 MR. ZAUZMER: Thank you, Your Honor. I'll just make
8 a very brief rebuttal. But the important objection, Your
9 Honor, concerns this matter with the plea offer that was made.

10 THE COURT: Um-hum.

11 MR. ZAUZMER: Mr. Cogan is correct -- well, I think
12 as to the facts, and I'll tell you why I say I think. The
13 government did make the five-year offer that he describes and
14 Mr. Pease was not dishonest in any way. What Mr. Pease was
15 saying to Your Honor is, it didn't get off the ground -- the
16 defense rejected it. Now Mr. Cogan says that there was also a
17 meeting with Mr. Mann -- that I'm not aware of. Now Mr. Mann
18 certainly had the right to meet with anybody he wanted and
19 make that offer, but that I don't know if that happened.

20 But there was a five-year offer. The legal objection
21 I'm making, Your Honor, is that that should not be considered
22 by the Court as part of sentencing.

23 THE COURT: Oh, I agree with you. I mean, I agree.
24 That cite should be considered.

25 MR. ZAUZMER: And let me just cite if I were writing

1 something on this --

2 THE COURT: -- but the problem was that -- maybe I
3 should have raised it, but it struck me as in light of the
4 arguments you're making for such a high sentence -- I just
5 wanted to ask you about that.

6 MR. ZAUZMER: And let me say, we've only mentioned
7 one of the reasons prosecutors do this. And I know Your Honor
8 knows this because you have prosecutorial experience yourself.

9 THE COURT: Um-hum.

10 MR. ZAUZMER: Part of it is resources. Part of it is
11 thinking is it worth it to me knowing the interests of my
12 office to get out of a case with a certain result. But the
13 second part that we haven't talked about is certainty. A
14 prosecutor always has to think, do I want to go to the risk of
15 a jury trial which however overwhelming the evidence always
16 presents risk.

17 And those are valid prosecutorial considerations
18 and --

19 THE COURT: Absolutely correct. No question about
20 it.

21 MR. ZAUZMER: -- the case I need to put on the
22 record, Your Honor, is Bordenkircher v. Hayes, which is a
23 Supreme Court decision in the 1970's and it's the reason I
24 stood up. It's 434 U.S. 357. It was actually a more extreme
25 case. The prosecutor made an offer of five years and when the

1 defendant rejected it, the prosecutor increased the charges so
2 that the court had to impose a life sentence. And the Supreme
3 Court upheld that and gave a very lengthy explanation that you
4 can read about why this is valid and understandable
5 prosecutorial conduct that has nothing to do with the ultimate
6 outcome of the case.

7 THE COURT: Yeah. I agree.

8 MR. ZAUZMER: Thank you, Your Honor.

9 Briefly then, the second legal point is on the
10 validity of these e-mails. I'm not going to talk about the e-
11 mails. Your Honor can read them. They speak for themselves.

12 THE COURT: As I said, I did start reading them, but
13 I found them to be so personal in nature that I found them
14 somewhat offensive, frankly. I read the ones you cited -- I
15 mean, I didn't like the idea of prying into somebody's, you
16 know, private conversation of his daughter, his fiancée and --

17 MR. ZAUZMER: Well, I understand what you're saying,
18 Your Honor, but I will -- let me represent them.

19 THE COURT: I understand -- I told you, you know, I
20 had experience in prisons too -- ten years as the chairman of
21 the Lancaster County prison board, which is no big deal. It
22 happened to go with the job. But this kind of invasion of
23 privacy is justifiable primarily -- primarily for prison
24 security. It is also probably justifiable to investigate
25 crime. But the primary reason for it is prison security.

1 That having been said --

2 MR. ZAUZMER: May I just say, Your Honor.

3 THE COURT: Go ahead.

4 MR. ZAUZMER: Historically, that is true. But the
5 government has always looked at mail and phone calls and --

6 THE COURT: Oh, I know that. That's why I said I
7 know.

8 MR. ZAUZMER: -- introduced it as evidence.

9 THE COURT: That's why I said primarily -- in a
10 notice, I said primarily.

11 MR. ZAUZMER: Right. I did notice that, your Honor.

12 THE COURT: Yeah.

13 MR. ZAUZMER: What we tried to do, and of course we
14 accept Your Honor's criticism, but what we tried to do --
15 there were 12,000 pages here.

16 THE COURT: Yeah.

17 MR. ZAUZMER: And you can see the limited amount that
18 was cited. We tried to cite excerpts that were relevant to
19 the 3353(a) factors.

20 THE COURT: Yeah, I know. I know that's what you
21 were citing it for.

22 MR. ZAUZMER: And the legal point I want to make --

23 THE COURT: But some of them had no relevance to that
24 factor at all, but that --

25 MR. ZAUZMER: Well, but that's your call. But the --

1 THE COURT: Well -- you can't tell me that the
2 conversation with his daughter about what's going to happen
3 after he gets out of jail and everything and give and take
4 between a daughter, that has any --

5 MR. ZAUZMER: Well no, he has a --

6 THE COURT: But look, let's not --

7 MR. ZAUZMER: I'm not going to belabor that --

8 THE COURT: -- let's not dwell on it, because
9 honestly I have considered the one -- some of them I've
10 frankly considered as dwelling on his character and that's
11 what I'm supposed to do.

12 MR. ZAUZMER: And the only case I want to mention on
13 the record is Pepper v. U.S., which is a Supreme Court case
14 this year in which the Supreme Court says that the Court can
15 and must consider at a resentencing hearing both post-offense
16 conduct that's both good and bad.

17 THE COURT: Yeah.

18 MR. ZAUZMER: And the defense, of course, cited
19 Pepper and put in letters about positive things that they say
20 Mr. Fumo has done in prison. And we were acting within the
21 mandate of Pepper as well. So that's the --

22 THE COURT: Yeah.

23 MR. ZAUZMER: -- the legal point I wanted to make on
24 that.

25 With regard to the Wright case that Mr. Cogan

1 mentioned, authored by Justice Alito -- again with regard to
2 good works the Third Circuit was very clear in the departure
3 here -- that if this is part of your job and you don't put in
4 extra time or your own money, it couldn't be the basis of a
5 departure. What Justice Alito clarified in Wright, is that
6 you could have public officials who do good things as part of
7 their job and the very fact that they have that job is a
8 sacrifice. And the example that he used is someone who spends
9 his entire career in a low-paying public service job, doing
10 good things for the public. That person, Justice Alito said,
11 is entitled to a departure. And it was a very, very small
12 departure --

13 THE COURT: Um-hum.

14 MR. ZAUZMER: -- in the Wright case. Nothing like
15 what we have here, where we have someone who as I argued
16 yesterday does part-time work, does good things and benefits
17 enormously from his public position. The fundamental question
18 in this case is, we have the fraud guidelines that apply to
19 anyone who commits a fraud, anyone who steals four million
20 dollars abuses the position of trust, violates the tax laws,
21 obstructs justice, is looking at a guideline range of 210 to
22 262 months. And what we've established is that courts
23 throughout this country on a daily basis are imposing
24 sentences at or near that range.

25 And so the question is, is Mr. Fumo because he had

1 this amazing job as a state senator and the ability to do all
2 these good things -- does this entitle him to a break? And I
3 would submit to Your Honor, we take umbrage at Mr. Cogan's
4 suggestion that we in any way have tried to stir up the public
5 on this -- there's not a single letter, single phone call,
6 single communication, that the government ever asked for in
7 contrast to the defense submissions.

8 Everything we gave Your Honor was unsolicited. And
9 the public may not be brilliant when it comes to the law, but
10 that's the fundamental thing they were reacting to -- is the
11 notion that a senator is in a position to do good things for
12 others, and as a result he gets a lesser sentence for the same
13 crimes that other people would not get.

14 THE COURT: I understand the public outrage on this
15 and when I first imposed sentence, I expected it. And I don't
16 ignore the public, but, you know, that as Mr. Cogan pointed
17 out and many others, that's a reason why a judge has life
18 tenure, perhaps, to not be overly influenced or at least not
19 let that influence his decision, but only the factors that he
20 must consider.

21 But, you know, I'm a public official. I'm not immune
22 to the criticism that has come as a result of what I did. I
23 feel it very, very much. But, you know, I still have to do --
24 I still have to follow what the guidelines -- what not the
25 guidelines, what the sentencing factors are and make my

1 decision on that basis.

2 MR. ZAUZMER: You do. And in my last word, Your
3 Honor, is that I'm not suggesting that Your Honor should do
4 anything --

5 THE COURT: Yeah.

6 MR. ZAUZMER: -- because someone in the public --

7 THE COURT: Yes.

8 MR. ZAUZMER: -- says so. You wouldn't do that --
9 that would be wrong and we fully respect your authority and
10 your wisdom in making the right decision. All I've been
11 trying to say, is that we think to the extent that we've been
12 criticized and attacked and it's been suggested that we ran
13 some kind of campaign that we didn't run.

14 THE COURT: No, I don't think so. I don't believe
15 that. Now, I also --

16 MR. ZAUZMER: But all I'm saying is what --

17 THE COURT: -- and I also think that you were totally
18 correct in appealing from the procedural faults I made here
19 and that's your job.

20 MR. ZAUZMER: Thank you.

21 THE COURT: And --

22 MR. ZAUZMER: But my last -- my last sentence, Your
23 Honor, is that what people in the public did react to since
24 that's been brought up, is the same thing that we're arguing.
25 I'm not arguing to you and Mr. Pease didn't argue, that you

1 should reach a certain decision because someone in the public
2 says it. What we argue is, this is an informed, intelligent
3 opinion that we commend Your Honor and Your Honor will make
4 the call as to whether it's appropriate to give such striking
5 sentencing leniency on this basis.

6 THE COURT: That's very well said -- very well
7 stated.

8 MR. ZAUZMER: Thank you very much, Your Honor.

9 THE COURT: Thank you, Mr. Zauzmer. Now the time has
10 come, Mr. Fumo, for you to address the Court.

11 MR. COGAN: Could we have a very short break
12 before --

13 THE COURT: Yeah, we could have -- I actually hoped
14 somebody would ask. Okay.

15 MR. COGAN: You're in charge.

16 THE COURT: Thank you. We'll make it a fifteen-
17 minute break.

18 (Recess from 11:22 a.m. until 11:36 a.m.)

19 THE CLERK: All rise, please. The Court is now in
20 session.

21 THE COURT: Please be seated, everyone.

22 Mr. Fumo, you come forward, please.

23 THE DEFENDANT: Good morning, Your Honor.

24 THE COURT: Good morning, it is morning.

25 THE DEFENDANT: Yes, I wanted to make sure.

1 THE COURT: I've never put a limitation on a
2 prisoner's right to allocution and I won't make any exception
3 in your case. I consider it a part and a very important part
4 of my ultimate determination. Most people who sit where I sit
5 feel the same way. They want to talk to -- actually talk to
6 the person who draws a sentence so we're going to do that now
7 and I'll let you make a statement and as you can imagine, this
8 time I have some things to ask you.

9 THE DEFENDANT: I would appreciate questions.

10 THE COURT: Last time it was too late -- I don't
11 know -- and I didn't have my hearing aid in but now I do.

12 THE DEFENDANT: Yes -- is too, Your Honor.

13 THE COURT: Yeah, okay. Very well.

14 THE DEFENDANT: I can't get one in prison -- when I
15 get out.

16 THE COURT: Let's go.

17 THE DEFENDANT: Your Honor, the --

18 THE COURT: Just one final thing here. We talk about
19 the newspaper so much, I'm not even going to address the
20 newspaper except to say that someone suggested I was
21 starstruck and I want you to put to rest that --

22 THE DEFENDANT: Me put it to rest?

23 THE COURT: Yeah. I was somehow starstuck and I want
24 to tell you right now that I'm not starstruck. You're just
25 another person appearing here before me. Of course, you have

1 a different background than others, but --

2 With that last and only criticism of the newspaper --

3 THE DEFENDANT: Your Honor, I wanted to make sure I
4 didn't say that.

5 THE COURT: No, no. Actually, a writer who does a
6 nice job otherwise said that, but go ahead, Mr. Fumo. You may
7 proceed now.

8 THE DEFENDANT: Thank you, Your Honor. Your Honor, I
9 thought a lot about this, and last night in my cell I sat down
10 and tried to write out what I wanted to say today. So it
11 might be disjointed, it might be longer than I normally would,
12 but it was --

13 THE COURT: No, go right ahead.

14 THE DEFENDANT: -- a stream of consciousness, if
15 nothing else.

16 THE COURT: Yeah.

17 THE DEFENDANT: First of all, Your Honor, let me say
18 that I am so sorry that we are here today. I am sorry that
19 you have to live through all this again; I am sorry that I had
20 to come back from Ashland in the way that I had to come back
21 and travel. And mostly, I am sorry that my Carolyn, Vincent,
22 Allie and my friends and family have had to relive this now
23 and with the additional humiliation of having to come into
24 Court in handcuffs every time.

25 I want to apologize for my disheveled appearance, but

1 it has been a long trip and I am very limited in what I can do
2 with my appearance -- my beard, my hair. As to the jumpsuit,
3 Your Honor, I asked that my family bring clothes so I didn't
4 have to wear this to Court and I don't want to blame the
5 marshals because they've been the best people in the whole
6 justice system, I think, but their policy is that you don't do
7 that unless you're in front of a jury, but --

8 THE COURT: Yeah.

9 THE DEFENDANT: -- but I didn't intend to come here
10 this way.

11 THE COURT: Well, if anybody thinks that my decision
12 is going to be based on your clothing, I would be very
13 disappointed. So --

14 THE DEFENDANT: Yeah, I --

15 THE COURT: Okay.

16 THE DEFENDANT: -- I didn't mean to imply that, Your
17 Honor.

18 THE COURT: Yeah. Okay.

19 THE DEFENDANT: I just wanted to address an issue
20 that again was in the press.

21 THE COURT: Yeah.

22 THE DEFENDANT: Judge, I want to dwell -- I don't
23 want to dwell on the case again, but there are -- excuse me,
24 my handwriting is horrible and -- and -- in the shoe, you're
25 only allowed a --

1 MR. COGAN: Refill.

2 THE DEFENDANT: -- a refill to write with of a pen,
3 so it's worse than it normally would be.

4 THE COURT: Okay.

5 THE DEFENDANT: But there are a few issues that I do
6 want to discuss regarding the case and some of the pleadings.
7 And they are as follows: one, it offends me when the
8 prosecutors continue to try and say that I was not a working
9 senator. I would like to ask them clearly for a definition of
10 what it is to be a full-time senator as they referred to in
11 their pleadings as opposed to a part-time senator that they
12 referred to in their pleadings.

13 Your Honor, I gave my life to the senate and to
14 government and I think as I told you the last time, it wasn't
15 difficult to do. I enjoyed it. So I had no reason to not
16 want to do it. If anything, I wanted to do it more and more.
17 There is -- I don't think Your Honor's ever served in the
18 legislature --

19 THE COURT: No.

20 THE DEFENDANT: -- but I know you served as a D.A.
21 and a judge and --

22 THE COURT: Um-hum.

23 THE DEFENDANT: There's no greater euphoria, Your
24 Honor, for a human being than be able to help another human
25 being. And that's what senators and house members -- that's

1 their role in the way our government is structured. So
2 there's not a bigger high. I worked -- I gave my life to it.

3 Your Honor was here and heard everything despite the
4 characterizations.

5 Secondly, on Christmas I learned about helping poor
6 people at Christmas from my second wife who was here yesterday
7 with my daughter Allie. It was her idea; it wasn't mine. It
8 happened over twenty years ago when she said for my Christmas
9 present I want to help a family. And of course she got a
10 Christmas present in addition, but we found a family. And she
11 and I started this -- we went out and shopped. We went to
12 Kiddie City and Toys"R"Us to give someone a Christmas that
13 they couldn't otherwise have.

14 Judge, I did that -- I don't say that I've got to get
15 accolades for it. But I am offended when people imply that I
16 didn't do it or that I used Fumo-for-senate money to do it.
17 Jamie Spagna was one of the beneficiaries and later one of the
18 people that helped us do that. And again, it wasn't something
19 that was a chore. It was something that I enjoyed doing. And
20 I was always taught that if you're really going to do
21 something good, you don't take bows for it. You do it as
22 anonymously as you can. And those gifts were always delivered
23 anonymously.

24 Jane and Allie still do it to this day. I think they
25 do it a little different that they actually go out and buy

1 stuff, still, but I do more families so we -- a little bit
2 different. Even while I was in prison -- again, not for
3 accolades and not because I thought I was coming back here --
4 did I plot and scheme this. Carolyn did it for me. We called
5 Senator Kitchen's office, who is probably represents the
6 poorest people in Philadelphia, and asked her for some
7 recipients. And Carolyn went in some of the -- shall I say,
8 toughest neighborhoods in Philadelphia at night to deliver the
9 presents. So, I am hurt by those accusations, Your Honor.
10 God should strike me dead if I'm not telling you the truth on
11 that, and I wish He would. And I will continue to do that for
12 as long as I can because it's the right thing to do and now it
13 probably represents a greater percentage of my income.

14 Your Honor, perjury -- every time I conflicted with
15 their view of what they believed the facts were, it wasn't a
16 dispute, it was perjury. Only they take the position that
17 their way is the truth, the right and the way. Your Honor,
18 I'm sorry. It's not, especially in this case. There were
19 ways of looking at things that they viewed and I viewed. And
20 one of the things that I did read in the Third Circuit
21 dissent, that I've always believed -- in fact, Your Honor, I
22 want to correct something, Mr. Buffone may get angry with me,
23 but -- at the last allocution, when you talked about the
24 legislature putting mandatory sentencing in, I said and you
25 didn't hear me and then he told me to shut up, that I didn't

1 vote for that judge. I was one of I think seventeen in the
2 senate that stood up against that, because I believed that
3 judges have a role -- a critical role -- they're not just
4 referees during the trial. When that's over, the burden is
5 placed on their shoulders. And there were a lot of people at
6 that time that didn't like judges, that said we don't trust
7 them. I was not one of them, Your Honor.

8 Your Honor, the Third Circuit said that there's only
9 one person who knows this case inside out, upside down, from a
10 nonprejudicial standpoint. And that's you. You've heard the
11 witnesses. You've heard the doc -- you've seen the documents.
12 And their demeanor -- you saw the demeanor of Mr. Sprague.
13 You saw with your own eyes the documents, RAS agreed. Judge,
14 my testimony probably differed with the prosecutor's version
15 of the facts, but it was not perjurious. It was not meant to
16 be, and I submit that it wasn't.

17 Lastly, my drug abuse. I have laid before the world
18 openly my problems and what I did and what I continued to do
19 for so many years. And again, I never viewed it as drug abuse
20 because to me, drug abuse was illegal drugs. I had a
21 prescription. For me, in my mind, that was for me to use, and
22 to use them all together to feel as good as I could feel --
23 never -- it was what it was, Judge, and I did it. I did it
24 knowingly; I did it because it was an escape especially during
25 times in this investigation and during these proceedings. The

1 thing you would look for is just, leave me alone. Let me
2 escape. And they allowed me to do that. And the testimony is
3 long-standing that I was a social drinker -- one or two drinks
4 a night. Well, I've since found out that if I'm going to take
5 the drugs, I can't even be a social drinker. I never viewed
6 myself as an alcoholic. I still don't. But I resorted at
7 times to drinking more than one or two when I was alone, again
8 to escape.

9 Again, Judge, I -- excuse me a minute, please, Your
10 Honor.

11 THE COURT: Okay. Take your time.

12 THE DEFENDANT: I've been clean ever since I entered
13 prison by definition, but I have to admit that many times I
14 still long for some Xanax. This might be one of those times.
15 I am probably more nervous before you today than I was the
16 last sentencing, because then I had the advantage of that
17 drug.

18 And, I apologize to the Court and to the world for
19 being so weak. Lastly, on this issue, I -- I want to tell you
20 that during the normal procedures to apply for RDAP, I was
21 approved. I was in the middle of the last interview. It was
22 broken off because the doctor in charge had to take a break.
23 He said we'll get back to it in a week or two when I get back
24 from vacation. He came back and all of a sudden said to me --
25 the region contacted him. I was not eligible. Judge, he

1 hadn't submitted anything to the region yet. So that is what
2 it is. I'm tired, depressed -- all I want is peace.

3 I'm much older today than I was two and a half years
4 ago when I stood before you. Prison is not an easy place to
5 be, even in a camp. I no longer own my own body. It belongs
6 to the attorney general and the Bureau of Prisons. They can
7 do with it as they see fit. They can strip it, which they've
8 done numerous times. When I go back today I'll be stripped
9 again and searched. They can chain me up as they do when they
10 bring me across with handcuffs and a chain. They can put leg
11 irons on me if I want -- they want. And they can even put me
12 in solitary confinement, Your Honor, for no reason -- no
13 reason is, I mean, to what I have done.

14 THE COURT: Um-hum.

15 THE DEFENDANT: My commitment papers here say -- I
16 forget the exact wording, but broad-based publicity, I think,
17 is the reason why I'm in solitary. I get the same punishment
18 as someone who punched a guard, and that's not easy.

19 When people -- when I went -- when people go to
20 prison for the first time, they are scared. It is a traumatic
21 event unless you're a professional and you're just coming
22 back. I had been prepared by Joel Sickler and some other
23 people that had been to prison, as to what to expect. But
24 there is no preparation that can make you go in there at ease.

25 I remember the first day I went into Ashland, Carolyn

1 had come with us on the journey. I wouldn't let her come to
2 the prison. I went with my friends and my son. Fortunately
3 for me, there was a CO on duty who was sensitive, I'll even go
4 so far as to use the word kind, which CO's I guess, aren't
5 supposed to be.

6 THE COURT: It's a tough job.

7 THE DEFENDANT: But I was lucky I had him when I came
8 in. He escorted Vincent out with a bag of what was left of my
9 personal effects, and said hug your son, and I did. And he
10 left. He proceeded to do what he had to do. It was the first
11 time I had been stripped searched. He processed me, but in
12 such a way that I didn't feel demeaned. And he took away some
13 of my fear.

14 Regrettably, the impression that people have of
15 prison is what they see in the world's worst movies. That's
16 not what it is. I remember I went back a few days later, I
17 had gotten some legal mail, and he was the one in charge of
18 that. And I thanked him then, and tears come into my eyes,
19 and he said it was his job and he understood. For that I am
20 grateful.

21 In fact, by and large, I think the staff, at least at
22 Ashland, that I became familiar with, are generally,
23 overwhelmingly professional, understanding, and trying to do a
24 job. Among the CO's there's a bell curve. There's those in
25 the middle, there's those that are terrific, and there are

1 those that are not so terrific. But it's not like you see in
2 a movie. There is no brutality. The prison is an emotional,
3 mental thing as much as it is control of your body.

4 That day I was processed in, case manager -- there
5 was publicity about me not wanting to be in Ashland, and it
6 was local as well -- everywhere I go, Your Honor, there's
7 publicity. Not that I generate it. And they were upset. And
8 I said, look, I wanted to make it clear that it wasn't because
9 I didn't like Ashland, it was because it was an eight and a
10 half hour drive from my family and friends.

11 And he said, well, eighteen months, and 500 miles,
12 and you can apply -- that's all he kept saying to me. And I
13 said fine. I went in. I got processed. I got clothing. I
14 got -- having to almost strip, at least I could keep my
15 underwear on, to get fitted in a public room in the laundry.
16 I then went to my dorm, which is called a unit, placed in my
17 cell, which is called a cube, and the 4 o'clock camp began. I
18 had no idea what that was. I learned.

19 And that was fearful. Everybody was quiet. People
20 come down. And one of the inmates who I was with at the time
21 said you can hear them with their jingles on the key rings or
22 whatever. To this day, when I hear that jingle, I don't know
23 what to expect. And then, Your Honor, I had four hours in,
24 37-, 38,000 more to go.

25 All the other inmates there knew what their sentence

1 was. When you know that, you can pace yourself. I didn't. I
2 still don't. Twenty-six months later. My serving those times
3 with that fear of the unknown is much different than someone
4 else serving their time.

5 While in prison, I've seen people die. And the most
6 frightening thing to endure is you're sitting in your cube and
7 you hear them next door, packing somebody out. It isn't like
8 they announce so-and-so is leaving; so-and-so died; so-and-so
9 is going to the hole. It just happens. Your biggest fear is,
10 when will it happen to me. You live with that every day. Not
11 knowing.

12 You know what you try to do, to be straight. One of
13 my biggest offenses in prison, Your Honor, too many books.
14 I'm allowed five. I have more than that, I confess. Maybe
15 they'll call the prison if they know. That's my -- I mean,
16 it's not cell phones and all the other things. Too many
17 books.

18 When I went to the shoe the first time, it was
19 frightening. It was the 4 o'clock count. Early in the day I
20 had met with the camp administrator. It was the day of the
21 earthquake. And there were stories on the television. And
22 across the banner on the bottom -- and I have no idea why
23 me -- it was that this -- we had lost the appeal. Some
24 inmates were enthused, they said, oh, they threw out your
25 sentence, terrific. You know, I said no, that's not a good

1 thing.

2 The administrator saw that, didn't know what to do,
3 panicked, met with me, and said are you okay? And I said yes,
4 I'm okay. He said, well, look, if you have a problem, talk to
5 your counselor, and she'll get a hold of me. I said fine.

6 After the 4 o'clock count, I got word, go see Mr.
7 Atkins. I mean, I was just about to take my 4 o'clock
8 medicines I walked out, guys were going to lunch, and I
9 figured well, what could he want? And he said, this officer
10 here wants to see you. He takes me back to R&D without saying
11 a word, and says take off your clothes, and strip searched me
12 again and gives me an orange jumpsuit. And I said what's this
13 about? He said, I don't know. They just told me to bring you
14 over.

15 We rode over. It was surreal. We talked about the
16 earthquake. Next thing I know, I was in handcuffs for the
17 first time in my life, being put into the shoe. Scary, Judge.
18 Especially when I didn't do anything to get there. I asked
19 the COs that were there what happened. Nobody knew. I
20 finally found one CO who said to me, I don't know what
21 happened, all I know is it came from the front office.

22 I'm now in a cell that's maybe six feet wide, maybe
23 seven feet long, with a double bunk, a toilet and a sink here,
24 and the old fashioned bars, Your Honor, open six and they pull
25 a thing and it opens.

1 I asked for food, because everybody was going to eat.
2 They said we don't have any. Fortunately, some of the inmates
3 there were able to pass through the bars -- I know distinctly
4 what I ate -- an overripe banana and a granola bar. I'm not
5 crying the blues about that, Judge, I'm just trying to let you
6 know what it was like.

7 I asked for my meds. I said I had to have my meds,
8 because of my illnesses. And the one that hurts me the most
9 is restless leg. They said, I don't know. I mean, you know,
10 there's a pill line later. I come in, I asked for my meds.
11 They said we don't have anything for you. And contrary to
12 what Mr. Pease said in his pleadings, Your Honor, I did not
13 get my meds. I did not get my meds until the next day -- and
14 I figured it out, twenty-six hours after I got into the hole,
15 and probably thirty-some hours after I took my meds that
16 morning before.

17 And all of those meds, I've since talked to the
18 people in the pharmacy and all, they all carry it through:
19 the Prozac, the Met -- not the Metformin as much, but the
20 Prozac, they're like longer-lasting effects. But the Requip
21 is not. I did not sleep that night, Your Honor. Not at all.
22 Because that's the one that causes me the problem.

23 When I finally got out, I went back. It took me two
24 weeks to get my stuff back. Someone had stole my -- sold my
25 bed. Someone had stolen my boots. Someone had sold my shirt.

1 It is what it is. But I did get everything back, finally.

2 Your Honor -- excuse me, Your Honor. On my e-mails,
3 post-incarceration. Your Honor, we were the last facility in
4 the BOP to get e-mails by seven years, but we finally got it.
5 There is a thing that -- every time you're on, you know, they
6 can monitor your e-mails.

7 I viewed that the same way that Your Honor did; that
8 this is in case I want to escape, in case I want to commit a
9 crime, in case I want to incite others to commit a crime. I
10 knew they were reading them. I never had a doubt about that.
11 In fact, one time I was called over because I was critical of
12 the warden, and they asked me about it. And I explained to
13 them the position, and they explained it to me. So I knew
14 they were reading them.

15 But, Your Honor, I never, ever would have dreamed
16 that they would have been published. Never. And those
17 e-mails expressed the full gambit (sic) of my emotions. They
18 weren't just the ones that the prosecutors put in their
19 pleadings. I think our people put more -- I've never seen
20 them, Your Honor. I know there's 12,000 pages for six months.
21 Yes, I'm angry. Yes, I'm depressed. Yes, I have dreams.
22 Yes, I have hopes and fears. I'm a human being, Your Honor.

23 They own my body. If it were possible, I guess, they
24 would own my soul, but god didn't make it that way. So I
25 still have the ability to dream and to get angry. And now, to

1 all those people that I may have said bad things about in my
2 most angry of moments, I apologize. But I never said -- I
3 never meant them to say I call you this, and I want the world
4 to know it. They were meant for the person they were sent to.

5 The thing that I found most distressing about prison
6 is not within the prison, because you can get used to that.
7 You can pace yourself if you know your sentence, but you still
8 go, much like an alcoholic that -- friends of mine that are
9 alcoholics -- you go day to day, week to week, sometimes hour
10 to hour. You just get through it. But the things that affect
11 you the most are what's going on outside.

12 If there's a family problem -- in my case, Your
13 Honor, I was the leader of the family in that sense -- you
14 can't solve it. You can't even discuss it. You can call on
15 the phone, one of the people, talk for fifteen minutes,
16 monitored, have to get off for a half hour, call again,
17 another person for fifteen minutes. Have to get off again.

18 Meantime you're eating up your 300 minute monthly
19 budget. You can't comfort people that way. You can't solve
20 problems. You can't bring reason to situations. It's the
21 outside things that happen, for a person like me that's used
22 to helping people and getting things done, that I've found the
23 worst.

24 I was able to help people inside the system. I've
25 seen, many times, wives leave their husbands, girlfriends

1 leave their boyfriends, and I've seen those people devastated.
2 I've seen people -- their parents die. There's no place to go
3 and cry, Your Honor. There's no place. You have to kind of
4 go with a guy and walk around the yard and hope -- find a
5 little place where you can be a human being and express your
6 grief. The chapel's locked, because guys are hiding cell
7 phones in it. I mean, it's -- it is what it is. But there's
8 no place to be a human being when you've had a loss.
9 Fortunately, I was able to help some people that way.

10 Your Honor, the other thing about prison that nobody
11 thinks of -- I was prepped by a professional, I talked to
12 people, I knew one thing. The food was bad. Everybody told
13 me that. You're going to hate the food. They were right.
14 I've learned to live with it. And I was never one not to go
15 to McDonalds for dinner. It never bothered me. Although I
16 like better dinners, but. So you learn how to do that.

17 But the things that you miss, without even thinking
18 about it: a chair; a simple chair. Your Honor, I sat better
19 in that chair, these two days, than I have for twenty-six
20 months. There's no chairs in prison. There's stools.
21 There's plastic kind of chairs. It doesn't exist. It's
22 amazing. I never thought of that.

23 A bed to sleep in, a bed with my back. There's a
24 "bed", but it sags. If you're lucky, it only sags in one or
25 two places. It sags where my back is. I'm not complaining,

1 Judge, I'm just saying there are things that nobody prepped me
2 for. There are things that nobody thinks about.

3 Music. Music. I have a radio, Your Honor. It picks
4 up country and western, which I was never exposed to before.

5 THE COURT: Well, you've got learn to like country
6 and western.

7 THE DEFENDANT: I have, Your Honor, and bluegrass.

8 THE COURT: I happen to like both of them, but that's
9 neither here nor there.

10 THE DEFENDANT: I got a into a little bit of the
11 bluegrass --

12 THE COURT: Okay.

13 THE DEFENDANT: -- being in West Virginia. Hip hop
14 and rap, Your Honor, I don't think you got into either. But
15 that's there. And NPR. I listen mostly to NPR. I was
16 ecstatic one day they played Rhapsody in Blue.

17 THE COURT: They played what?

18 THE DEFENDANT: Rhapsody in Blue.

19 THE COURT: Oh, yes, okay.

20 THE DEFENDANT: On NPR. It was like heaven. I
21 listened to -- I mean, guys were like, wait, shut up, I want
22 to hear this. I mean, not that I'm the biggest fan, but I
23 haven't heard anything -- Sinatra, Tony -- any of that, Your
24 Honor. And it's not a big deal, but it's something that no
25 one would think twice about. It doesn't exist there.

1 I don't know what -- I guess the purpose of prison in
2 my case is punishment. So that's all part of the punishment.
3 I accept it. But I want you to know and others, that it's not
4 Club Fed. It's not some easy thing to do. And one of the
5 worst things is that the BOP put me eight and a half hours, by
6 car, from my family. Carolyn's afraid to fly. So she drives
7 every month, and then drives back again.

8 My granddaughter's been to see me twice. They flew
9 her in. But that gets to be expensive. Friends come. But
10 it's still extremely difficult, given where I am. Another
11 piece of the punishment, designed or not, it exists.

12 I'm sorry, Your Honor. My trip here, Your Honor, was
13 draconian. Whether you're a camper, a terrorist, a murderer,
14 a super-max candidate, everybody travels the same way. I left
15 Ashland in chains, leg-irons, shotguns, got on a bus for
16 thirteen hours, and made it into Atlanta, which is a
17 nineteenth century prison to say the best.

18 When I got there, I was processed through and strip
19 searched and all of that again. Then I was put in a cell with
20 another person. We were locked down twenty-two hours a day.
21 On weekends we were locked down twenty-four hours a day. Not
22 that we did anything wrong. We were in transit.

23 Fortunately, I got a chance on one of those two-hour
24 segments to call Carolyn to let her know I was okay. But I
25 didn't get her the first time, I got Vincent. Then I called

1 her later. I feel worse for what they have to suffer. I know
2 where I am. I know that I'm safe, at least in my mind. They
3 don't.

4 From Atlanta we went to somewhere outside of West
5 Point, Your Honor. I think it's Stewart Airfield. And again,
6 shackles, chains. The U.S. Marshals were there. It was a
7 different kind of trip. When we got there, we wound up in a
8 bus going to Brooklyn.

9 Your Honor, Brooklyn was the Ritz. There was -- I
10 was in the general population. I got a regular meal, rather
11 than when I was in Atlanta and here, the guard comes through
12 and unlocks a slot, and this door bangs down, and he puts a
13 tray in. You eat it or you don't. There's no card, Your
14 Honor, about how many calories and fat and all that other
15 stuff that they talk about. You eat it or you don't.

16 By the way, Your Honor, that doesn't exist in the
17 camp either, when they talk about a healthy diet. It is what
18 it is. You start to be almost like a Pavlovian dog. When you
19 hear it and you opens, you know you're going to eat.

20 When -- I'm sorry, Your Honor. Your Honor, I've
21 already apologized in my last elocution for what I did. And I
22 said my beliefs at the time. I never, Your Honor, viewed it
23 as an attack on democracy. I believe in democracy. I teach
24 history at the camp. I've learned more about how this country
25 was founded than I ever knew before. I even learned about the

1 media during the Revolution. You would love to know about
2 that, Your Honor.

3 When Mr. Contino testified yesterday, he used a word
4 that was very appropriate. And I don't mean to minimize what
5 I did by saying others did it. But Your Honor, it was
6 institutionalized. It was nothing to talk about a campaign in
7 your office with other people. It was nothing to engage
8 staff -- and bipartisan, both sides. I'm glad that at least
9 they finally, according to Mr. Contino, passed a rule. Your
10 Honor recalls, there were no rules. There is now a rule, I
11 understand, that you can't do campaign activity, I would
12 assume -- because political is your job -- anywhere in the
13 Capitol or whatever. I have not seen the rule.

14 It's interesting, Your Honor, that they didn't
15 address personal. They still haven't done that. And I
16 suspect because they don't know how. But, Your Honor, that's
17 what I felt.

18 And it's -- Citizens Alliance, it's old news. But I
19 was petty in taking tools and consumer goods. But, Your
20 Honor, I never thought it was a crime for Citizens Alliance to
21 remodel a building that they owned and continue to own and
22 rent it to the Pennsylvania Senate for an amount less than
23 they might have gotten from somebody else. I never viewed
24 that, Your Honor. I guess it is, now. But I think every
25 nonprofit could learn from that. And I think these courts

1 will be filled, if we enforce those laws like that.

2 I'm glad that Mr. Cogan brought out the contrast
3 between the description of Citizens Alliance today and what it
4 was before. It is not a broken down institution that is in
5 shambles. Your Honor, go along Passyunk Avenue and see what
6 we did. Go look at the Charter Schools that are still
7 running. Your Honor, it still has, I think in that report
8 that was made to the Commonwealth Court, a net worth of
9 seventeen million dollars. There is no community nonprofit in
10 the city of Philadelphia that has anything like that.

11 And because of that, it continues to go on, Your
12 Honor. Yes, they no longer can clean streets, because they
13 ran out of money. But the money they ran out of, Your Honor,
14 was me. There's nothing anywhere in the record -- their
15 records, anywhere, that they ever raised ten cents except for
16 what I brought to them.

17 So to say that they lost their ability to raise money
18 because of my actions there, it's not true. They're still
19 viable. And they have opted to pull back on the service area.
20 They still clean Passyunk Avenue. They still run certain
21 things there. And they're getting rid of assets that they
22 don't need any more. They're probably the most viable
23 nonprofit in the city of Philadelphia.

24 Whether they like it or not, Your Honor, that's a
25 legacy. It didn't exist but for me. And the strategies that

1 were talked about were mine. That was part of the trial. I
2 was the evil person who made the last decision on which
3 properties to buy. I was the one who said let's do this and
4 do that and do this. I was the leader there on the one hand,
5 and then on the other hand, I wasn't.

6 They are what they are, Your Honor. But Citizens
7 Alliance is still viable and I'm still proud of it. The
8 Charter School is still viable, and I'm proud of it.

9 When we get into good works, Your Honor, I -- at the
10 time, I wasn't keeping a scorecard. I remember former Senator
11 Lou Hill who later became a judge, saying to me when I first
12 got elected, every time you do something, make a memo and save
13 it for when you run four years from now. You'll forget you
14 did it.

15 I tried to do that, Your Honor. I just ran out of
16 time, and it was silly. But there's a lot of things in this
17 city -- and I guess the way you define what is extraordinary
18 versus what is ordinary, you say to yourself, there's seven
19 senators in Philadelphia. And not to disparage my colleagues,
20 what did the other six do?

21 Senator Tartaglione did testify at the last hearing
22 about what I did among senators. Is it part of my job to
23 spend seven years meeting with merchants to try and build the
24 food distribution center? I don't know. But nobody else did.
25 Is it part of my job to get them funding? Probably. But I

1 don't know anybody else who could have done it.

2 The stadiums that are down there, I wasn't a big fan
3 of the stadiums, but I recognized the economic need. I had to
4 go down and bring Governor Casey to meet with the neighbors
5 who did want any more stadiums in their neighborhood. Part of
6 my job? Maybe. The legislature wasn't there.

7 So many of those things, Your Honor, I did on my own.
8 Again, I didn't do it to try and get reelected. If you've
9 ever looked at the returns, Your Honor, I've never had a race
10 where I won less than two to one. It's because, Your Honor,
11 it was enjoyable.

12 Now, can you be extraordinary and still do things you
13 enjoy? I don't know. I guess you'd have to ask some guys in
14 the military that won medals for extraordinary things that
15 they did. Did they enjoy it or not? I don't know.

16 Your Honor, my record speaks for itself. And as I
17 said the last time, I gave my life to this at the expense of
18 my family. And that was selfish of me. But I did it. I
19 never did it planning that I would be here today saying it's
20 extraordinary. It's just what I did, Your Honor.

21 Your Honor, I guess all I can ask from you is mercy,
22 understanding, compassion. I never viewed and I still don't
23 view a fifty-five month sentence in prison, plus millions of
24 dollars in restitution and fines, as a slap on the wrist. And
25 I think Mr. Contino referred to it, well, if you're -- who did

1 he use? I forget --

2 UNIDENTIFIED SPEAKER: Murdock.

3 THE DEFENDANT: -- Murdock, it's no big deal. Your
4 Honor, I made money. And fortunately, I made money just in
5 time to pay for this case. I made it from selling the bank.
6 The federal government got, I don't know, close to three
7 million so far. I understand there'll be more. The
8 lawyers -- and I'm not begrudging them their fees -- got over
9 four million dollars. Your Honor, that's not --

10 No, he only got a little piece. But when you get to
11 those numbers, Your Honor, I'm not Murdock. And had I not
12 sold the bank just in time to give it back, I would have been
13 in a horrible situation. But nobody cares about fines and
14 restitutions. They don't make headlines, Your Honor. The
15 only thing that makes headlines is how much time did he get in
16 jail.

17 And I've seen those attitudes, Your Honor. We,
18 unfortunately, in America today, have an attitude: put him in
19 jail and throw the key away. Don't care what they did. I,
20 myself, Your Honor, didn't appreciate what went on until I got
21 there.

22 I can tell you that at Ashland today, among the 300
23 inmates that I'm with, maybe ten shouldn't be trusted on home
24 confinement or whatever it is. I can see the billions that
25 we're spending -- and I got friendly with some of the CEO --

1 CO's rather, telling me they're going to build twenty-five
2 more prisons. Your Honor, I was touched by two books that
3 never existed in my mind. One was "Three Felonies a Day"
4 written by Harvey Silverglate. It's the liberal point of
5 view -- you know, bleeding heart, liberals, soft on crime
6 people, where they talked about what's going on. It was cited
7 in -- I read about it in the New York Times.

8 THE COURT: Yes, I think I --

9 THE DEFENDANT: -- when the Skilling case came up.

10 THE COURT: -- read or my wife read that book.

11 THE DEFENDANT: Well, I have a copy here, Your Honor.

12 UNIDENTIFIED SPEAKER: You can't give it to him.

13 THE COURT: Is that the one about the overzealous
14 prosecution or not?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: In general, yes. Okay.

17 THE DEFENDANT: And that's the liberal point of view.
18 That's the so-called soft-on-crime point of view.

19 THE COURT: Yes.

20 THE DEFENDANT: Then I recently found out there's
21 another book, "One Nation Under Arrest", put out by the
22 Heritage Foundation. Hardly liberal.

23 THE COURT: I saw that also, but I didn't read it.

24 THE DEFENDANT: With an introduction by Edwin Meese,
25 not a soft-on-crime guy, both saying the same thing.

1 Something is out of control and has to be done.

2 Your Honor, I've seen -- I tried once -- twice in
3 fact, when I was there. I've run into kids -- I'm sixty-
4 eight, Your Honor. As I said in one of my e-mails, yeah, I'd
5 like to lobby -- and then I said in another one, I could never
6 be a good lobbyist, I'm not a good ass-kisser. And in
7 addition, I don't -- at my age, I can't pay my dues. Everyone
8 in life has to pay their dues regardless of what their
9 profession is. It's too late for me to pay dues.

10 But I've seen kids in there in their late twenties.
11 My cellmate, black kid from Dayton. These kids get no
12 training. They get a GED if they don't have one. That's it.
13 And when they leave, we say to them, go get a job in a
14 horrible economy as a felon, or you'll be back.

15 I went to the education department and I went to the
16 psychology department, and I said look, in the camp, Your
17 Honor, the inmates do all of the maintenance. I mean, you've
18 got -- and they don't worry if they lost the HVAC guy, because
19 there'll be another one in another month. Everybody's
20 replaceable. But they do all the maintenance. I said let me
21 get some books in here and try and teach people that want it,
22 how to be an electrician. We'll do it at night when they're
23 not supposed to be doing whatever they do. And then during
24 the day you can let them go work with the electricians as an
25 apprentice.

1 They're not going to go out with some kind of
2 electrical certification. But they'll have a skill. No,
3 can't do it. The regulations are such. We don't have any
4 money. We don't have this. And I understand, Your Honor. I
5 understand bureaucracies. They got a book, and that's the
6 book. You don't go here, you stay on the book. Nobody wrote
7 the book that I had an idea for.

8 So I wonder, in a country that has right now about
9 three million people in prison, I think the statistics are we
10 represent five percent of the free world's population, yet we
11 have twenty-five percent of the free world's people
12 incarcerated. Is there something wrong with America, that our
13 people are more evil, that our people are more dishonest than
14 the citizens of Canada? I don't think so.

15 I think there's a problem. I think it should be
16 solved, although I've seen how long it takes to solve pro --
17 and I know the Congress, Your Honor. I mean, one of the worst
18 parts of my job is every time a congressman puts a bill in --
19 and I think the most popular one is sixty-five percent for
20 good time -- they all come to me, should we start packing out?
21 And I have to explain to them the realities of politics.

22 But sooner or later, I think we're going to do
23 something, twenty years from now, I don't know. I won't see
24 it. But America has to see it. All I want, Judge, is for the
25 years that I have left -- I remember when I was a kid, someone

1 was sixty-five, they were ancient. Now, when someone dies at
2 eighty, you say how young they were. Your whole perspective
3 changes, Judge. Each day the reality of my mortality grows.
4 It's just, I guess, the circle of life.

5 I'd like to be able to spend some of that time with
6 my granddaughter, with my son, with my daughter, and with
7 beloved Carolyn who has stuck by me like no woman should. I
8 don't want to spend that time maybe just about alive, on
9 dialysis or on a mask, or whatever. That's all I ask, Your
10 Honor.

11 I may be viewed as an evil person. Regrettably, I
12 don't agree with that assessment, Your Honor. I did a lot of
13 good for a lot of people. There's a lot of people today who
14 have lives that wouldn't have them were it not for me. And
15 again, I didn't do it because I thought at some point in time,
16 I'd be standing before you. It was my life, Your Honor. I'm
17 a human being. I have frailties. I have problems. And I
18 have a psychological problem of OCD. I've got all this stuff.
19 I'm a complicated person.

20 Yes, I'm bright. And as I told you the last time, I
21 agreed with Mr. Pease's analysis. To whom god gives the most,
22 god expects the most. I think -- and they will definitely
23 differ with me; I don't know if Your Honor will -- I think I
24 made the goal that I set for myself long ago, and that is to
25 make the world a better place, because you've been there. Not

1 perfect, Your Honor. And yes, at the peak of my power, I was
2 one tough son of a bitch. But, Your Honor, you know from
3 Harrisburg, there's nobody walking around in togas and sandals
4 talking philosophy. It's battle.

5 And I had an extra load, carrying the evil city from
6 the east on my back. And I had to do what I had to do to get
7 it done. In retrospect -- Your Honor, they said I'm not a
8 dumb guy. If I thought I was committing a crime, would I put
9 it in 1,000 e-mails? I don't think so, Your Honor. I
10 wouldn't have done that.

11 Now, was I, as they say, arrogant and got used to
12 power? Perhaps I did. Your Honor, that's -- that's me. And
13 I stand before you as a whole person. Certainly not one
14 without faults, but one that did some good. Thank you, Your
15 honor.

16 THE COURT: No, no. No, no. Stay up here. I've got
17 stuff I want to talk to you about.

18 Needless to say your elocution here is dramatically
19 different from most elocutions I hear here. And it's because,
20 as you've alluded to, your background. Not many people appear
21 before me with your background.

22 I don't know if I told you this the last time, but
23 most of the people up here before me have a pretty sad
24 background. They've had nothing going for them. And what has
25 impressed me about some of them, not all of them, I have no

1 idea who's telling me the truth. But some of them genuinely
2 regret what they did. They want so desperately to make a new
3 life for themselves. And that's just some of them. Others
4 just give a canned response: I'm sorry I did it, Judge. I
5 won't do it again. I'll be good. You know.

6 But very few, if ever, have had an elocution like
7 yours. Now, your elocution is full of interesting things,
8 but -- and I won't cover them all, but I want to ask you this.
9 I don't understand, because you know my background. I'm from
10 conservative Lancaster County, Republican all my life. And I
11 don't understand why the Philadelphia politician -- and I
12 don't mean to pick on Philadelphia -- but I'm telling you what
13 I think -- why they don't think some of this stuff is wrong.
14 And apparently you don't.

15 I mean, for example, it's wrong to have the
16 investigator going out and investigate your girlfriend on
17 state money. Maybe you don't think he did it on state money,
18 but he got state money.

19 THE DEFENDANT: Your Honor, I understand that.

20 THE COURT: And why isn't it even wrong for your
21 secretaries, for example, to do personal work for you?

22 I mean, I know there's a different culture from place
23 to place. And I'm not suggesting that some of that culture
24 doesn't even exist in my own county. But why don't you think
25 that it is wrong to do stuff like that?

1 THE DEFENDANT: Your Honor, in retrospect, it
2 obviously is.

3 THE COURT: I mean, do you buy in -- I mean --

4 THE DEFENDANT: Oh, I -- Your Honor. I agree with
5 you. I mean, but one of the things you said about the
6 investigator following my girlfriend, was I did not think it
7 was on state time. I mean, I knew he had a contract.

8 THE COURT: Yes.

9 THE DEFENDANT: I didn't even know that they weren't
10 submitting the hours that they worked. I didn't know they
11 were just getting a flat -- I didn't have -- I didn't look at
12 that, Your Honor.

13 THE COURT: I can believe that.

14 THE DEFENDANT: And as far as the secretaries doing
15 personal things, it was a combination. It kind of just grew.
16 When I was doing my own checkbook one time in the afternoon,
17 one of the girls came in and said what are you doing? I said,
18 well, I got to, you know, do my checkbook. I'll do that, you
19 do other stuff. It started off --

20 THE COURT: I know. Of course you should have said
21 no.

22 THE DEFENDANT: -- and maybe I should have, Your
23 Honor.

24 THE COURT: You should have.

25 THE DEFENDANT: I know.

1 THE COURT: I mean, in my judgment that's the kind of
2 stuff that goes on that shouldn't go on. The people that work
3 for you in public service should just do public work. But
4 that aside, there was a senator who I'm sure you knew from
5 Lancaster County, Dick Snyder. Was he there when you were
6 there?

7 THE DEFENDANT: Yes, he was. I think --

8 THE COURT: He was probably about ready to go out
9 when you were there.

10 THE DEFENDANT: -- yeah, because then Senator
11 Armstrong came in.

12 THE COURT: He was the epitome of propriety in a job.
13 And of course, his style would never go over in Philadelphia.
14 It would never probably even go over in Harrisburg very much.
15 But Senator Snyder was that epitome of what a public servant
16 should be. And I will challenge the local people in Lancaster
17 County to -- who are covering this case to say that I'm wrong
18 about that.

19 But he stood for what it ought to me. I mean, he
20 talked about high ideas. He talked about Shakespeare and
21 philosophy and things like that. I don't expect you to do
22 that out in the Senate. I know it's a dog-eat-dog world the
23 way you describe it. But you've got to understand, from my
24 perspective, that isn't the way politics were done.

25 And I think our way was better. But, you know. And

1 I know you have trouble understanding that because there is
2 that culture --

3 THE DEFENDANT: No, I --

4 THE COURT: -- of everybody's doing it. I mean,
5 that -- I agree with you on that. I mean, I don't know how
6 many are doing it, but others are doing it -- are doing what
7 you did. There's no question about it. So --

8 THE DEFENDANT: But I could assure you, Your Honor,
9 if I were ever going to run for the Senate again, which I
10 never would and never could --

11 THE COURT: Yes.

12 THE DEFENDANT: -- there would be strict, and believe
13 me, a lot of systems implemented, even to the point of time
14 sheets. I mean --

15 THE COURT: Yes. I --

16 THE DEFENDANT: And there's no question that my case
17 has obviously moved the Senate to deal with politics or gut
18 campaigns, and not yet personal, but I assume it's --
19 hopefully sometime they'll do that. I mean, the rules should
20 be that no employee can do -- to the employee -- that no
21 employee can do any personal or campaign-related activity on
22 behalf of any senator. I mean, that should be the rule.

23 THE COURT: That should be. And Mr. Contino spoke
24 about the huge advantage the incumbent gets for that very
25 reason. He or she can effectively use his staff as a campaign

1 floor; which I realize here, and different -- every area is
2 different. You didn't have any competition here in
3 Philadelphia. Senator Snyder didn't have any meaningful
4 competition in Lancaster. That's the way politics is
5 sometimes.

6 But with that kind of a support, it just seemed to
7 me, you could have made a stand for a more principled
8 government. I know that's whistling in the dark. And I'll
9 never understand Philadelphia politics, never in my life.

10 And --

11 THE DEFENDANT: Your Honor, you sound like --

12 THE COURT: -- I'm an old man. I'll never understand
13 it.

14 THE DEFENDANT: -- you sound like every man I've ever
15 met that didn't live in Philadelphia who's in politics.

16 THE COURT: Yes, right. I mean, I know. I know
17 we -- and we used to say that -- I remember when they rewrote
18 the constitution some years ago, they said it would have been
19 easier if they just made Philadelphia a separate state when
20 they were doing the constitutional amendments back in 1968.

21 THE DEFENDANT: I think Senator Salvatore advocated
22 for something like that.

23 THE COURT: That -- is that who it was? Make
24 Philadelphia a separate state, and we could solve the problems
25 of the Commonwealth. I don't -- I happen to -- believe it or

1 not, I've lived in Philadelphia for twenty-one years now. And
2 I've gotten to like the city. And what I like about it is its
3 diversity and everybody -- every shape and form, and every
4 problem known to mankind here, exists in a big city. And this
5 is the real world in my opinion, down -- real world.

6 THE DEFENDANT: Well, Your Honor, I had the most
7 diverse district in Pennsylvania.

8 THE COURT: Yes. And it just -- it's the real world.
9 So I've enjoyed living here. But I really don't enjoy the --
10 what I see as the political -- I guess what the paper says is
11 it's all pay for play -- there's so much pay for play going on
12 in Philadelphia politics. And I wish that would -- I don't
13 know if that's -- I'm not going to make any judgments on that.
14 That's what I read in the paper.

15 And there's a lot of that that goes on. It's just
16 got to get a tighter grip on the ethics of the situation. I
17 know Philadelphia from time to time gets an ethics commission
18 lined up and try to get things changed and make things better.

19 And I guess what I was hoping from you, and maybe you
20 answered it in part, is that you reluctantly agree with some
21 of the things I'm saying.

22 THE DEFENDANT: Not that I reluctantly agree, Your
23 Honor. I understand what you're saying. But you're also
24 right that I did not have that viewpoint.

25 THE COURT: Yes.

1 THE DEFENDANT: And I apologize for that.

2 THE COURT: Yes.

3 THE DEFENDANT: And as I said, not to demean my
4 colleagues, but it was not a pervasive attitude in the Senate
5 of Pennsylvania.

6 THE COURT: Right. Right.

7 THE DEFENDANT: There were a few. Senator Snyder is
8 now --

9 THE COURT: You don't remember him well enough.

10 THE DEFENDANT: No.

11 THE COURT: But Senator Dick Snyder was a wonderful
12 straight-up person. He had his faults like everybody else,
13 but he was kind of the guy I remember when I first entered
14 politics back in the county.

15 And well, okay. The allocution, as usual, has been
16 helpful to me. I'm going to take until -- we're hoping to
17 come back here at 3 o'clock. That's the time that we'll
18 schedule for the sentencing. It might be slightly later than
19 that, but I'm hoping we'll be ready by three.

20 THE DEFENDANT: Thank you, Your Honor.

21 THE COURT: Okay. Court is adjourned.

22 (Court is adjourned)

23 * * * * *

24

25

C E R T I F I C A T I O N

I, Dena Page, the court approved transcriber, do
hereby certify the foregoing is a true and correct transcript
from the official electronic sound recording of the
proceedings in the above-entitled matter.

November 14, 2011

DENA PAGE

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